

for “Rules for computing credit for expense of work incentive programs” in item for subpart C, and “Business-related credits” for “Rules for computing credit for employment of certain new employees” in item for subpart D, and added items for subparts E and F.

1977—Pub. L. 95-30, title II, § 202(d)(1)(B), May 23, 1977, 91 Stat. 147, added subpart D.

1971—Pub. L. 92-178, title VI, § 601(c)(1), Dec. 10, 1971, 85 Stat. 557, added subpart C.

SUBPART A—NONREFUNDABLE PERSONAL CREDITS

Sec.	
21.	Expenses for household and dependent care services necessary for gainful employment.
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AMENDMENTS

2005—Pub. L. 109-58, title XIII, §§ 1333(b)(2), 1335(b)(5), Aug. 8, 2005, 119 Stat. 1030, 1036, added items 25C and 25D.

2001—Pub. L. 107-16, title VI, § 618(c), June 7, 2001, 115 Stat. 108, added item 25B.

1998—Pub. L. 105-206, title VI, § 6004(a)(1), July 22, 1998, 112 Stat. 792, substituted “Hope and Lifetime Learning credits” for “Higher education tuition and related expenses” in item 25A.

1997—Pub. L. 105-34, title I, § 101(d)(3), title II, § 201(e), Aug. 5, 1997, 111 Stat. 799, 806, added items 24 and 25A.

1996—Pub. L. 104-188, title I, § 1807(c)(6), Aug. 20, 1996, 110 Stat. 1902, added item 23.

1990—Pub. L. 101-508, title XI, § 11801(b)(1), Nov. 5, 1990, 104 Stat. 1388-522, struck out item 23 “Residential energy credit”.

1986—Pub. L. 99-514, title I, § 112(b)(5), Oct. 22, 1986, 100 Stat. 2109, struck out item 24 “Contributions to candidates for public office”.

1984—Pub. L. 98-369, div. A, title IV, §§ 471(b), 612(f), July 18, 1984, 98 Stat. 826, 913, substituted “Nonrefundable Personal Credits” for “Credits Allowable” as subpart A heading, struck out analysis of sections 31 through 45 formerly comprising subpart A, and inserted a new analysis of sections consisting of items 21 (formerly 44A), 22 (formerly 37), 23 (formerly 44C), 24 (formerly 41), and 25 and 26 (newly enacted).

1983—Pub. L. 98-67 repealed amendments made by Pub. L. 97-248. See 1982 Amendment note below.

Pub. L. 98-21, title I, § 122(c)(7), Apr. 20, 1983, 97 Stat. 87, inserted “and the permanently and totally disabled” to item 37.

Pub. L. 97-424, title V, § 515(b)(6)(D), Jan. 6, 1983, 96 Stat. 2181, substituted “and special fuels” for “, special fuels, and lubricating oil” after “gasoline” in item 39.

Pub. L. 97-414, § 4(c)(1), Jan. 4, 1983, 96 Stat. 2056, added item 44H.

1982—Pub. L. 97-248, title III, §§ 307(b)(3), 308(a), Sept. 3, 1982, 96 Stat. 590, 591, provided that, applicable to payments of interest, dividends, and patronage dividends paid or credited after June 30, 1983, item 31 is amended to read “Tax withheld on wages, interest, dividends, and patronage dividends”. Section 102(a), (b) of Pub. L. 98-67, title I, Aug. 5, 1983, 97 Stat. 369, repealed subtitle A (§§ 301-308) of title III of Pub. L. 97-248 as of the close of June 30, 1983, and provided that the Internal Revenue Code of 1954 [now 1986] [this title] shall be applied and administered (subject to certain exceptions) as if such subtitle A (and the amendments made by such subtitle A) had not been enacted.

1981—Pub. L. 97-34, title II, § 221(c)(2), title III, § 331(e)(2), Aug. 13, 1981, 95 Stat. 247, 295, added items 44F and 44G.

1980—Pub. L. 96-223, title II, §§ 231(b)(1), 232(b)(3)(B), Apr. 2, 1980, 94 Stat. 272, 276, added items 44D and 44E.

1978—Pub. L. 95-618, title I, § 101(b)(1), Nov. 9, 1978, 92 Stat. 3179, added item 44C.

1977—Pub. L. 95-30, title I, § 101(e)(1), title II, § 202(d)(1)(A), May 23, 1977, 91 Stat. 134, 147, added item 44B and struck out item 36 “Credit not allowed to individuals taking standard deduction”.

1976—Pub. L. 94-455, title IV, § 401(a)(2)(D), title V, §§ 501(c)(2), 503(b)(5), 504(a)(2), title XIX, § 1901(b)(1)(Z), Oct. 4, 1976, 90 Stat. 1555, 1559, 1562, 1565, 1792, substituted in item 42 “General tax credit” for “Taxable income credit”, struck out in item 36 “pay optional tax or”, inserted in item 33 “possession tax credit”, substituted in item 37 “Credit of the elderly” for “Retirement income”, added item 44A, and struck out item 35 “Partially tax-exempt interest received by individuals”.

1975—Pub. L. 94-164, § 3(a)(2), Dec. 23, 1975, 89 Stat. 973, substituted “Taxable income credit” for “Credit for personal exemptions” in item 42.

Pub. L. 94-12, title II, §§ 203(b)(1), 204(c), 208(d)(1), Mar. 29, 1975, 89 Stat. 30, 32, 35, renumbered item 42 as 45 and added item 42 applicable to taxable years ending after Dec. 31, 1974, but to cease to apply to taxable years ending after Dec. 31, 1975, item 43 applicable to taxable years beginning after Dec. 31, 1974, but before Jan. 1, 1976, and item 44.

1971—Pub. L. 92-178, title VI, § 601(c)(2), Dec. 10, 1971, 85 Stat. 557, added items 40 and 41, and redesignated former item 40 as 42.

1970—Pub. L. 91-258, title II, § 207(d)(10), May 21, 1970, 84 Stat. 249, inserted “, special fuels,” after “gasoline” in item 39.

1965—Pub. L. 89-44, title VIII, § 809(d)(1), June 21, 1965, 79 Stat. 167, added item 39 and redesignated former item 39 as 40.

1964—Pub. L. 88-272, title II, § 201(d)(1), Feb. 26, 1964, 78 Stat. 32, struck out item 34.

1962—Pub. L. 87-834, § 2(g)(1), (2), Oct. 16, 1962, 76 Stat. 972, 973, added headings of subparts A and B and item 38, and redesignated former item 38 as 39.

§ 21. Expenses for household and dependent care services necessary for gainful employment

(a) Allowance of credit

(1) In general

In the case of an individual for which there are 1 or more qualifying individuals (as defined in subsection (b)(1)) with respect to such individual, there shall be allowed as a credit against the tax imposed by this chapter for the taxable year an amount equal to the applicable percentage of the employment-related expenses (as defined in subsection (b)(2)) paid by such individual during the taxable year.

(2) Applicable percentage defined

For purposes of paragraph (1), the term “applicable percentage” means 35 percent reduced (but not below 20 percent) by 1 percentage point for each \$2,000 (or fraction thereof) by which the taxpayer’s adjusted gross income for the taxable year exceeds \$15,000.

(b) Definitions of qualifying individual and employment-related expenses

For purposes of this section—

(1) Qualifying individual

The term “qualifying individual” means—

(A) a dependent of the taxpayer (as defined in section 152(a)(1)) who has not attained age 13,

(B) a dependent of the taxpayer (as defined in section 152, determined without regard to subsections (b)(1), (b)(2), and (d)(1)(B)) who is physically or mentally incapable of caring for himself or herself and who has the same principal place of abode as the taxpayer for more than one-half of such taxable year, or

(C) the spouse of the taxpayer, if the spouse is physically or mentally incapable of caring for himself or herself and who has the same principal place of abode as the taxpayer for more than one-half of such taxable year.

(2) Employment-related expenses

(A) In general

The term “employment-related expenses” means amounts paid for the following expenses, but only if such expenses are incurred to enable the taxpayer to be gainfully employed for any period for which there are 1 or more qualifying individuals with respect to the taxpayer:

- (i) expenses for household services, and
- (ii) expenses for the care of a qualifying individual.

Such term shall not include any amount paid for services outside the taxpayer’s household at a camp where the qualifying individual stays overnight.

(B) Exception

Employment-related expenses described in subparagraph (A) which are incurred for services outside the taxpayer’s household shall be taken into account only if incurred for the care of—

- (i) a qualifying individual described in paragraph (1)(A), or
- (ii) a qualifying individual (not described in paragraph (1)(A)) who regularly spends at least 8 hours each day in the taxpayer’s household.

(C) Dependent care centers

Employment-related expenses described in subparagraph (A) which are incurred for services provided outside the taxpayer’s household by a dependent care center (as defined in subparagraph (D)) shall be taken into account only if—

- (i) such center complies with all applicable laws and regulations of a State or unit of local government, and
- (ii) the requirements of subparagraph (B) are met.

(D) Dependent care center defined

For purposes of this paragraph, the term “dependent care center” means any facility which—

- (i) provides care for more than six individuals (other than individuals who reside at the facility), and
- (ii) receives a fee, payment, or grant for providing services for any of the individuals (regardless of whether such facility is operated for profit).

(c) Dollar limit on amount creditable

The amount of the employment-related expenses incurred during any taxable year which

may be taken into account under subsection (a) shall not exceed—

- (1) \$3,000 if there is 1 qualifying individual with respect to the taxpayer for such taxable year, or
- (2) \$6,000 if there are 2 or more qualifying individuals with respect to the taxpayer for such taxable year.

The amount determined under paragraph (1) or (2) (whichever is applicable) shall be reduced by the aggregate amount excludable from gross income under section 129 for the taxable year.

(d) Earned income limitation

(1) In general

Except as otherwise provided in this subsection, the amount of the employment-related expenses incurred during any taxable year which may be taken into account under subsection (a) shall not exceed—

(A) in the case of an individual who is not married at the close of such year, such individual’s earned income for such year, or

(B) in the case of an individual who is married at the close of such year, the lesser of such individual’s earned income or the earned income of his spouse for such year.

(2) Special rule for spouse who is a student or incapable of caring for himself

In the case of a spouse who is a student or a qualifying individual described in subsection (b)(1)(C), for purposes of paragraph (1), such spouse shall be deemed for each month during which such spouse is a full-time student at an educational institution, or is such a qualifying individual, to be gainfully employed and to have earned income of not less than—

(A) \$250 if subsection (c)(1) applies for the taxable year, or

(B) \$500 if subsection (c)(2) applies for the taxable year.

In the case of any husband and wife, this paragraph shall apply with respect to only one spouse for any one month.

(e) Special rules

For purposes of this section—

(1) Place of abode

An individual shall not be treated as having the same principal place of abode of the taxpayer if at any time during the taxable year of the taxpayer the relationship between the individual and the taxpayer is in violation of local law.

(2) Married couples must file joint return

If the taxpayer is married at the close of the taxable year, the credit shall be allowed under subsection (a) only if the taxpayer and his spouse file a joint return for the taxable year.

(3) Marital status

An individual legally separated from his spouse under a decree of divorce or of separate maintenance shall not be considered as married.

(4) Certain married individuals living apart

If—

- (A) an individual who is married and who files a separate return—

(i) maintains as his home a household which constitutes for more than one-half of the taxable year the principal place of abode of a qualifying individual, and

(ii) furnishes over half of the cost of maintaining such household during the taxable year, and

(B) during the last 6 months of such taxable year such individual's spouse is not a member of such household,

such individual shall not be considered as married.

(5) Special dependency test in case of divorced parents, etc.

If—

(A) section 152(e) applies to any child with respect to any calendar year, and

(B) such child is under the age of 13 or is physically or mentally incapable of caring for himself,

in the case of any taxable year beginning in such calendar year, such child shall be treated as a qualifying individual described in subparagraph (A) or (B) of subsection (b)(1) (whichever is appropriate) with respect to the custodial parent (as defined in section 152(e)(4)(A)), and shall not be treated as a qualifying individual with respect to the non-custodial parent.

(6) Payments to related individuals

No credit shall be allowed under subsection (a) for any amount paid by the taxpayer to an individual—

(A) with respect to whom, for the taxable year, a deduction under section 151(c) (relating to deduction for personal exemptions for dependents) is allowable either to the taxpayer or his spouse, or

(B) who is a child of the taxpayer (within the meaning of section 152(f)(1)) who has not attained the age of 19 at the close of the taxable year.

For purposes of this paragraph, the term “taxable year” means the taxable year of the taxpayer in which the service is performed.

(7) Student

The term “student” means an individual who during each of 5 calendar months during the taxable year is a full-time student at an educational organization.

(8) Educational organization

The term “educational organization” means an educational organization described in section 170(b)(1)(A)(ii).

(9) Identifying information required with respect to service provider

No credit shall be allowed under subsection (a) for any amount paid to any person unless—

(A) the name, address, and taxpayer identification number of such person are included on the return claiming the credit, or

(B) if such person is an organization described in section 501(c)(3) and exempt from tax under section 501(a), the name and address of such person are included on the return claiming the credit.

In the case of a failure to provide the information required under the preceding sentence, the preceding sentence shall not apply if it is shown that the taxpayer exercised due diligence in attempting to provide the information so required.

(10) Identifying information required with respect to qualifying individuals

No credit shall be allowed under this section with respect to any qualifying individual unless the TIN of such individual is included on the return claiming the credit.

(f) Regulations

The Secretary shall prescribe such regulations as may be necessary to carry out the purposes of this section.

(Added Pub. L. 94-455, title V, § 504(a)(1), Oct. 4, 1976, 90 Stat. 1563, § 44A; amended Pub. L. 95-600, title I, § 121(a), Nov. 6, 1978, 92 Stat. 2779; Pub. L. 97-34, title I § 124 (a)-(d), Aug. 13, 1981, 95 Stat. 197, 198; Pub. L. 98-21, title I, § 122(c)(1), Apr. 20, 1983, 97 Stat. 87; renumbered § 21 and amended Pub. L. 98-369, div. A, title IV, §§ 423(c)(4), 471(c), 474(c), July 18, 1984, 98 Stat. 801, 826, 830; Pub. L. 99-514, title I, § 104(b)(1), Oct. 22, 1986, 100 Stat. 2104; Pub. L. 100-203, title X, § 10101(a), Dec. 22, 1987, 101 Stat. 1330-384; Pub. L. 100-485, title VII, § 703(a)-(c)(1), Oct. 13, 1988, 102 Stat. 2426, 2427; Pub. L. 104-188, title I, § 1615(b), Aug. 20, 1996, 110 Stat. 1853; Pub. L. 107-16, title II, § 204(a), (b), June 7, 2001, 115 Stat. 49; Pub. L. 107-147, title IV, § 418(b), Mar. 9, 2002, 116 Stat. 57; Pub. L. 108-311, title II, §§ 203, 207(2), (3), Oct. 4, 2004, 118 Stat. 1175, 1177; Pub. L. 109-135, title IV, § 404(b), Dec. 21, 2005, 119 Stat. 2634; Pub. L. 110-172, § 11(a)(1), Dec. 29, 2007, 121 Stat. 2484.)

AMENDMENT OF SECTION

For termination of amendment by section 901 of Pub. L. 107-16, see Effective and Termination Dates of 2001 Amendment note below.

PRIOR PROVISIONS

A prior section 21 was renumbered section 15 of this title.

AMENDMENTS

2007—Subsec. (e)(5). Pub. L. 110-172 substituted “section 152(e)(4)(A)” for “section 152(e)(3)(A)” in concluding provisions.

2005—Subsec. (b)(1)(B). Pub. L. 109-135 inserted “(as defined in section 152, determined without regard to subsections (b)(1), (b)(2), and (d)(1)(B))” after “dependent of the taxpayer”.

2004—Subsec. (a)(1). Pub. L. 108-311, § 203(a), substituted “In the case of an individual for which there are 1 or more qualifying individuals (as defined in subsection (b)(1)) with respect to such individual” for “In the case of an individual who maintains a household which includes as a member one or more qualifying individuals (as defined in subsection (b)(1))”.

Subsec. (b)(1). Pub. L. 108-311, § 203(b), reenacted heading without change and amended text generally. Prior to amendment, text read as follows: “The term ‘qualifying individual’ means—

“(A) a dependent of the taxpayer who is under the age of 13 and with respect to whom the taxpayer is entitled to a deduction under section 151(c),

“(B) a dependent of the taxpayer who is physically or mentally incapable of caring for himself, or

“(C) the spouse of the taxpayer, if he is physically or mentally incapable of caring for himself.”

Subsec. (e)(1). Pub. L. 108-311, §203(c), amended heading and text of par. (1) generally. Prior to amendment, text read as follows: "An individual shall be treated as maintaining a household for any period only if over half the cost of maintaining the household for such period is furnished by such individual (or, if such individual is married during such period, is furnished by such individual and his spouse)."

Subsec. (e)(5). Pub. L. 108-311, §207(2), struck out "paragraph (2) or (4) of" before "section 152(e)" in subpar. (A) and substituted "as defined in section 152(e)(3)(A)" for "within the meaning of section 152(e)(1)" in concluding provisions.

Subsec. (e)(6)(B). Pub. L. 108-311, §207(3), substituted "section 152(f)(1)" for "section 151(c)(3)".

2002—Subsec. (d)(2)(A). Pub. L. 107-147, §418(b)(1), substituted "\$250" for "\$200".

Subsec. (d)(2)(B). Pub. L. 107-147, §418(b)(2), substituted "\$500" for "\$400".

2001—Subsec. (a)(2). Pub. L. 107-16, §§204(b), 901, temporarily substituted "35 percent" for "30 percent" and "\$15,000" for "\$10,000". See Effective and Termination Dates of 2001 Amendment note below.

Subsec. (c)(1). Pub. L. 107-16, §§204(a)(1), 901, temporarily substituted "\$3,000" for "\$2,400". See Effective and Termination Dates of 2001 Amendment note below.

Subsec. (c)(2). Pub. L. 107-16, §§204(a)(2), 901, temporarily substituted "\$6,000" for "\$4,800". See Effective and Termination Dates of 2001 Amendment note below.

1996—Subsec. (e)(10). Pub. L. 104-188 added par. (10).

1988—Subsec. (b)(1)(A). Pub. L. 100-485, §703(a), substituted "age of 13" for "age of 15".

Subsec. (c). Pub. L. 100-485, §703(b), inserted at end: "The amount determined under paragraph (1) or (2) (whichever is applicable) shall be reduced by the aggregate amount excludable from gross income under section 129 for the taxable year."

Subsec. (e)(5)(B). Pub. L. 100-485, §703(a), substituted "age of 13" for "age of 15".

Subsec. (e)(9). Pub. L. 100-485, §703(c)(1), added par. (9).

1987—Subsec. (b)(2)(A). Pub. L. 100-203 inserted at end: "Such term shall not include any amount paid for services outside the taxpayer's household at a camp where the qualifying individual stays overnight."

1986—Subsecs. (b)(1)(A), (e)(6)(A). Pub. L. 99-514, §104(b)(1)(A), substituted "section 151(c)" for "section 151(e)".

Subsec. (e)(6)(B). Pub. L. 99-514, §104(b)(1)(B), substituted "section 151(c)(3)" for "section 151(e)(3)".

1984—Pub. L. 98-369, §471(c), renumbered section 44A of this title as this section.

Subsec. (a)(1). Pub. L. 98-369, §474(c)(2), (3), substituted "subsection (b)(1)" for "subsection (c)(1)" and "subsection (b)(2)" for "subsection (c)(2)".

Subsec. (b). Pub. L. 98-369, §474(c)(1), redesignated subsec. (c) as (b). Former subsec. (b), which provided that the credit allowed by subsec. (a) could not exceed the amount of the tax imposed by this chapter for the taxable year reduced by the sum of the credits allowable under sections 33, 37, 38, 40, 41, 42, and 44, was struck out.

Subsec. (c). Pub. L. 98-369, §474(c)(1), redesignated subsec. (d) as (c). Former subsec. (c) redesignated (b).

Subsec. (d). Pub. L. 98-369, §474(c)(1), redesignated subsec. (e) as (d). Former subsec. (d) redesignated (c).

Subsec. (d)(2). Pub. L. 98-369, §474(c)(4), substituted "subsection (b)(1)(C)" for "subsection (c)(1)(C)" in introductory provisions.

Subsec. (d)(2)(A). Pub. L. 98-369, §474(c)(5), substituted "subsection (c)(1)" for "subsection (d)(1)".

Subsec. (d)(2)(B). Pub. L. 98-369, §474(c)(6), substituted "subsection (c)(2)" for "subsection (d)(2)".

Subsec. (e). Pub. L. 98-369, §474(c)(1), redesignated subsec. (f) as (e). Former subsec. (e) redesignated (d).

Subsec. (e)(5). Pub. L. 98-369, §474(c)(7), substituted "subsection (b)(1)" for "subsection (c)(1)" in provisions following subpar. (B).

Pub. L. 98-369, §423(c)(4), amended par. (5) generally, substituting subpars. (A) and (B) reading:

"(A) paragraph (2) or (4) of section 152(e) applies to any child with respect to any calendar year, and

"(B) such child is under the age of 15 or is physically or mentally incapable of caring for himself," for former provisions:

"(A) a child (as defined in section 151(e)(3)) who is under the age of 15 or who is physically or mentally incapable of caring for himself receives over half of his support during the calendar year from his parents who are divorced or legally separated under a decree of divorce or separate maintenance or who are separated under a written separation agreement, and

"(B) such child is in the custody of one or both of his parents for more than one-half of the calendar year."

and substituted in concluding text "(whichever is appropriate) with respect to the custodial parent (within the meaning of section 152(e)(1)), and shall not be treated as a qualifying individual with respect to the non-custodial parent" for "as the case may be, with respect to that parent who has custody for a longer period during such calendar year than the other parent, and shall not be treated as being a qualifying individual with respect to such other parent."

Subsecs. (f), (g). Pub. L. 98-369, §474(c)(1), redesignated subsecs. (f) and (g) as (e) and (f), respectively.

1983—Subsec. (b)(2). Pub. L. 98-21 substituted "relating to credit for the elderly and the permanently and totally disabled" for "relating to credit for the elderly".

1981—Subsec. (a). Pub. L. 97-34, §124(a), designated existing provisions as par. (1), substituted "the applicable percentage" for "20 percent" in par. (1) as so designated, and added par. (2).

Subsec. (c)(2)(B). Pub. L. 97-34, §124(c), designated existing provisions as cl. (i) and added cl. (ii).

Subsec. (c)(2)(C), (D). Pub. L. 97-34, §124(d), added subpars. (C) and (D).

Subsec. (d)(1). Pub. L. 97-34, §124(b)(1)(A), substituted "\$2,400" for "\$2,000".

Subsec. (d)(2). Pub. L. 97-34, §124(b)(1)(B), substituted "\$4,800" for "\$4,000".

Subsec. (e)(2)(A). Pub. L. 97-34, §124(b)(2)(A), substituted "\$200" for "\$166".

Subsec. (e)(2)(B). Pub. L. 97-34, §124(b)(2)(B), substituted "\$400" for "\$333".

1978—Subsec. (f)(6). Pub. L. 95-600 substituted provision disallowing a credit for any amount paid by a taxpayer to an individual with respect to whom, for the taxable year, a deduction under section 151(e) is allowable either to the taxpayer or his spouse or who is a child of the taxpayer who has not attained the age of 19 at the close of the taxpayer year and defining "taxpayer year" for provision disallowing a credit for any amount paid by the taxpayer to an individual bearing a relationship described in section 152(a)(1) through (8), or a dependent described in section 152(a)(9), except that a credit was allowed for an amount paid by a taxpayer to an individual with respect to whom, for the taxable year of the taxpayer in which the service was performed, neither the taxpayer nor his spouse was entitled to a deduction under section 151(e), provided the service constituted employment within the meaning of section 3121(b).

EFFECTIVE DATE OF 2005 AMENDMENT

Pub. L. 109-135, title IV, §404(d), Dec. 21, 2005, 119 Stat. 2634, provided that: "The amendments made by this section [amending this section and sections 152 and 223 of this title] shall take effect as if included in the provisions of the Working Families Tax Relief Act of 2004 [Pub. L. 108-311] to which they relate."

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108-311 applicable to taxable years beginning after Dec. 31, 2004, see section 208 of Pub. L. 108-311, set out as a note under section 2 of this title.

EFFECTIVE DATE OF 2002 AMENDMENT

Pub. L. 107-147, title IV, §418(c), Mar. 9, 2002, 116 Stat. 58, provided that: "The amendments made by this sec-

tion [amending this section and sections 23 and 137 of this title] shall take effect as if included in the provisions of the Economic Growth and Tax Relief Reconciliation Act of 2001 [Pub. L. 107-16] to which they relate.”

EFFECTIVE AND TERMINATION DATES OF 2001 AMENDMENT

Pub. L. 107-16, title II, §204(c), June 7, 2001, 115 Stat. 50, provided that: “The amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 2002.”

Amendment by Pub. L. 107-16 inapplicable to taxable, plan, or limitation years beginning after Dec. 31, 2010, and the Internal Revenue Code of 1986 to be applied and administered to such years as if such amendment had never been enacted, see section 901 of Pub. L. 107-16, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Section 1615(d) of Pub. L. 104-188 provided that:

“(1) IN GENERAL.—The amendments made by this section [amending this section and sections 151, 6109, 6213, and 6724 of this title] shall apply with respect to returns the due date for which (without regard to extensions) is on or after the 30th day after the date of the enactment of this Act [Aug. 20, 1996].

“(2) SPECIAL RULE FOR 1995 AND 1996.—In the case of returns for taxable years beginning in 1995 or 1996, a taxpayer shall not be required by the amendments made by this section to provide a taxpayer identification number for a child who is born after October 31, 1995, in the case of a taxable year beginning in 1995 or November 30, 1996, in the case of a taxable year beginning in 1996.”

EFFECTIVE DATE OF 1988 AMENDMENT

Section 703(d) of Pub. L. 100-485 provided that: “The amendments made by this section [amending this section and sections 129 and 6109 of this title] shall apply to taxable years beginning after December 31, 1988.”

EFFECTIVE DATE OF 1987 AMENDMENT

Section 10101(b) of Pub. L. 100-203, as amended by Pub. L. 100-647, title II, §2004(a), Nov. 10, 1988, 102 Stat. 3598, provided that:

“(1) IN GENERAL.—The amendment made by subsection (a) [amending this section] shall apply to expenses paid in taxable years beginning after December 31, 1987.

“(2) SPECIAL RULE FOR CAFETERIA PLANS.—For purposes of section 125 of the Internal Revenue Code of 1986, a plan shall not be treated as failing to be a cafeteria plan solely because under the plan a participant elected before January 1, 1988, to receive reimbursement under the plan for dependent care assistance for periods after December 31, 1987, and such assistance included reimbursement for expenses at a camp where the dependent stays overnight.”

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99-514 applicable to taxable years beginning after Dec. 31, 1986, see section 151(a) of Pub. L. 99-514, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 423(c)(4) of Pub. L. 98-369 applicable to taxable years beginning after Dec. 31, 1984, see section 423(d) of Pub. L. 98-369, set out as a note under section 2 of this title.

Section 475(a) of Pub. L. 98-369 provided that: “The amendments made by this title [probably means subtitle F (§§ 471-475) of title IV of Pub. L. 98-369, which enacted sections 25, 38, and 39 of this title, amended this section and sections 12, 15, 22 to 24, 27 to 35, 37, 39 to 41, 44A, 44C to 44H, 45 to 48, 51, 52, 55, 56, 86, 87, 103, 108, 129, 168, 196, 213, 280C, 381, 383, 401, 404, 409, 441, 527, 642, 691,

874, 882, 901, 904, 936, 1016, 1033, 1351, 1366, 1374, 1375, 1441, 1442, 1451, 3507, 6013, 6096, 6201, 6211, 6213, 6362, 6401, 6411, 6420, 6421, 6427, 6501, 6511, 7701, 7871, 9502, and 9503 of this title, repealed sections 38, 40, 44, 44B, 50A, 50B, and 53 of this title, and enacted provisions set out as notes under sections 30, 33, 46, and 48 of this title] shall apply to taxable years beginning after December 31, 1983, and to carrybacks from such years.”

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 98-21 applicable to taxable years beginning after Dec. 31, 1983, except that if an individual's annuity starting date was deferred under section 105(d)(6) of this title as in effect on the day before Apr. 20, 1983, such deferral shall end on the first day of such individual's first taxable year beginning after Dec. 31, 1983, see section 122(d) of Pub. L. 98-21, set out as a note under section 22 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Section 124(f) of Pub. L. 97-34 provided that:

“(1) Except as provided in paragraph (2), the amendments made by this section [amending this section and enacting section 129 of this title] shall apply to taxable years beginning after December 31, 1981.

“(2) The amendments made by subsection (e)(2) [amending sections 3121, 3306, and 3401 of this title and section 409 of Title 42, The Public Health and Welfare] shall apply to remuneration paid after December 31, 1981.”

EFFECTIVE DATE OF 1978 AMENDMENT

Section 121(b) of Pub. L. 95-600 provided that: “The amendment made by subsection (a) [amending this section] shall apply to taxable years beginning after December 31, 1978.”

EFFECTIVE DATE

Section applicable to taxable years beginning after Dec. 31, 1975, see section 508 of Pub. L. 94-455, set out as an Effective Date of 1976 Amendment note under section 3 of this title.

PROGRAM TO INCREASE PUBLIC AWARENESS

Pub. L. 101-508, title XI, §11114, Nov. 5, 1990, 104 Stat. 1388-414, provided that: “Not later than the first calendar year following the date of the enactment of this subtitle [Nov. 5, 1990], the Secretary of the Treasury, or the Secretary's delegate, shall establish a taxpayer awareness program to inform the taxpaying public of the availability of the credit for dependent care allowed under section 21 of the Internal Revenue Code of 1986 and the earned income credit and child health insurance under section 32 of such Code. Such public awareness program shall be designed to assure that individuals who may be eligible are informed of the availability of such credit and filing procedures. The Secretary shall use appropriate means of communication to carry out the provisions of this section.”

§ 22. Credit for the elderly and the permanently and totally disabled

(a) General rule

In the case of a qualified individual, there shall be allowed as a credit against the tax imposed by this chapter for the taxable year an amount equal to 15 percent of such individual's section 22 amount for such taxable year.

(b) Qualified individual

For purposes of this section, the term “qualified individual” means any individual—

(1) who has attained age 65 before the close of the taxable year, or

(2) who retired on disability before the close of the taxable year and who, when he retired, was permanently and totally disabled.

(c) Section 22 amount

For purposes of subsection (a)—

(1) In general

An individual's section 22 amount for the taxable year shall be the applicable initial amount determined under paragraph (2), reduced as provided in paragraph (3) and in subsection (d).

(2) Initial amount**(A) In general**

Except as provided in subparagraph (B), the initial amount shall be—

- (i) \$5,000 in the case of a single individual, or a joint return where only one spouse is a qualified individual,
- (ii) \$7,500 in the case of a joint return where both spouses are qualified individuals, or
- (iii) \$3,750 in the case of a married individual filing a separate return.

(B) Limitation in case of individuals who have not attained age 65**(i) In general**

In the case of a qualified individual who has not attained age 65 before the close of the taxable year, except as provided in clause (ii), the initial amount shall not exceed the disability income for the taxable year.

(ii) Special rules in case of joint return

In the case of a joint return where both spouses are qualified individuals and at least one spouse has not attained age 65 before the close of the taxable year—

- (I) if both spouses have not attained age 65 before the close of the taxable year, the initial amount shall not exceed the sum of such spouses' disability income, or
- (II) if one spouse has attained age 65 before the close of the taxable year, the initial amount shall not exceed the sum of \$5,000 plus the disability income for the taxable year of the spouse who has not attained age 65 before the close of the taxable year.

(iii) Disability income

For purposes of this subparagraph, the term "disability income" means the aggregate amount includable in the gross income of the individual for the taxable year under section 72 or 105(a) to the extent such amount constitutes wages (or payments in lieu of wages) for the period during which the individual is absent from work on account of permanent and total disability.

(3) Reduction**(A) In general**

The reduction under this paragraph is an amount equal to the sum of the amounts received by the individual (or, in the case of a joint return, by either spouse) as a pension or annuity or as a disability benefit—

- (i) which is excluded from gross income and payable under—

- (I) title II of the Social Security Act,
- (II) the Railroad Retirement Act of 1974, or

- (III) a law administered by the Veterans' Administration, or

- (ii) which is excluded from gross income under any provision of law not contained in this title.

No reduction shall be made under clause (i)(III) for any amount described in section 104(a)(4).

(B) Treatment of certain workmen's compensation benefits

For purposes of subparagraph (A), any amount treated as a social security benefit under section 86(d)(3) shall be treated as a disability benefit received under title II of the Social Security Act.

(d) Adjusted gross income limitation

If the adjusted gross income of the taxpayer exceeds—

- (1) \$7,500 in the case of a single individual,
- (2) \$10,000 in the case of a joint return, or
- (3) \$5,000 in the case of a married individual filing a separate return,

the section 22 amount shall be reduced by one-half of the excess of the adjusted gross income over \$7,500, \$10,000, or \$5,000, as the case may be.

(e) Definitions and special rules

For purposes of this section—

(1) Married couple must file joint return

Except in the case of a husband and wife who live apart at all times during the taxable year, if the taxpayer is married at the close of the taxable year, the credit provided by this section shall be allowed only if the taxpayer and his spouse file a joint return for the taxable year.

(2) Marital status

Marital status shall be determined under section 7703.

(3) Permanent and total disability defined

An individual is permanently and totally disabled if he is unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months. An individual shall not be considered to be permanently and totally disabled unless he furnishes proof of the existence thereof in such form and manner, and at such times, as the Secretary may require.

(f) Nonresident alien ineligible for credit

No credit shall be allowed under this section to any nonresident alien.

(Aug. 16, 1954, ch. 736, 68A Stat. 15, §37; Aug. 9, 1955, ch. 659, §1, 69 Stat. 591; Jan. 28, 1956, ch. 17, §1, 70 Stat. 8; Pub. L. 87-792, §7(a), Oct. 10, 1962, 76 Stat. 828; Pub. L. 87-876, §1, Oct. 24, 1962, 76 Stat. 1199; Pub. L. 88-272, title I, §113(a), title II, §§201(d)(3), 202(a), Feb. 26, 1964, 78 Stat. 24, 32, 33; Pub. L. 93-406, title II, §2002(g)(1), Sept. 2, 1974, 88 Stat. 968; Pub. L. 94-455, title V, §503(a), title

XIX, §1901(c)(1), Oct. 4, 1976, 90 Stat. 1559, 1803; Pub. L. 95-600, title VII, §§701(a)(1)-(3), 703(j)(11), Nov. 6, 1978, 92 Stat. 2897, 2942; Pub. L. 96-222, title I, §107(a)(1)(E)(i), Apr. 1, 1980, 94 Stat. 222; Pub. L. 97-34, title I, §111(b)(4), Aug. 13, 1981, 95 Stat. 194; Pub. L. 98-21, title I, §122(a), Apr. 20, 1983, 97 Stat. 85; renumbered §22 and amended Pub. L. 98-369, div. A, title IV, §§471(c), 474(d), July 18, 1984, 98 Stat. 826, 830; Pub. L. 99-514, title XIII, §1301(j)(8), Oct. 22, 1986, 100 Stat. 2658.)

REFERENCES IN TEXT

The Social Security Act, referred to in subsec. (c)(3)(A)(i)(I), (B), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Title II of the Social Security Act is classified generally to subchapter II (§401 et seq.) of chapter 7 of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see section 1305 of Title 42 and Tables.

The Railroad Retirement Act of 1974, referred to in subsec. (c)(3)(A)(i)(II), is act Aug. 29, 1935, ch. 812, as amended generally by Pub. L. 93-445, title I, §101, Oct. 16, 1974, 88 Stat. 1305, which is classified generally to subchapter IV (§231 et seq.) of chapter 9 of Title 45, Railroads. For further details and complete classification of this Act to the Code, see Codification note set out preceding section 231 of Title 45, section 231t of Title 45, and Tables.

AMENDMENTS

1986—Subsec. (e)(2). Pub. L. 99-514 substituted “section 7703” for “section 143”.

1984—Pub. L. 98-369, §471(c), renumbered section 37 of this title as this section.

Subsec. (a). Pub. L. 98-369, §474(d)(1), substituted “section 22 amount” for “section 37 amount”.

Subsec. (c). Pub. L. 98-369, §474(d)(2), substituted “Section 22 amount” for “Section 37 amount” in heading.

Subsec. (c)(1). Pub. L. 98-369, §474(d)(1), substituted “section 22 amount” for “section 37 amount”.

Subsec. (d). Pub. L. 98-369, §474(d)(3), amended subsec. (d) generally, striking out heading “Limitations” and designation “(1)” before “Adjusted gross income limitation” thereby making existing par. (1) the entire subsec. (d), redesignating existing subpars. (A), (B), and (C) as pars. (1), (2), and (3), respectively, and striking out provisions, formerly comprising par. (2), which had limited the amount of the credit allowed by this section for the taxable year to the amount of the tax imposed by this chapter for such taxable year.

1983—Pub. L. 98-21 inserted reference to permanently and totally disabled in section catchline.

Subsec. (a). Pub. L. 98-21 amended subsec. (a) generally, substituting reference to a qualified individual for reference to an individual who has attained the age of 65 before the close of the taxable year.

Subsec. (b). Pub. L. 98-21 in amending section generally added subsec. (b). Former subsec. (b) redesignated (c).

Subsec. (c). Pub. L. 98-21 in amending section generally, redesignated former subsec. (b) as (c) and, in (c) as so redesignated, added par. (2) and struck out former (2), which had provided that the initial amount was \$2,500 in the case of a single individual, \$2,500 in the case of a joint return where only one spouse was eligible for the credit under subsection (a), \$3,750 in the case of a joint return where both spouses were eligible for the credit under subsection (a), or \$1,875 in the case of a married individual filing a separate return, redesignated existing provisions as par. (3)(A), inserted “benefit” after “disability” therein, struck out former subpars. (A) to (C), which had specified sources of amounts received under title II of the Social Security Act, under the Railroad Retirement Act of 1935 or 1937, or otherwise excluded from gross income, added cls. (i) and (ii), substituted provision that no reduction would be made under cl. (i)(III) for any amount described in section

104(a)(4) for provision that no reduction would be made under former par. (3) for any amount excluded from gross income under section 72 (relating to annuities), 101 (relating to life insurance proceeds), 104 (relating to compensation for injuries or sickness), 105 (relating to amounts received under accident and health plans), 120 (relating to amounts received under qualified group legal services plans), 402 (relating to taxability of beneficiary of employees’ trust), 403 (relating to taxation of employee annuities), or 405 (relating to qualified bond purchase plans), and added subpar. (B). Former subsec. (c) redesignated (d).

Subsec. (d). Pub. L. 98-21 in amending section generally redesignated former subsec. (c) as (d). Former subsec. (d) redesignated (e).

Subsec. (e). Pub. L. 98-21 in amending section generally, redesignated former subsec. (d) as (e) and struck out provision that “joint return” meant the joint return of a husband and wife made under section 6013 and inserted provisions defining permanent and total disability. Former subsec. (e), which provided for an election of prior law with respect to public retirement system income, was struck out.

Subsec. (f). Pub. L. 98-21 reenacted subsec. (f) without change.

1981—Subsec. (e)(9)(B). Pub. L. 97-34 substituted “section 911(d)(2)” for “section 911(b)”.

1978—Subsec. (e)(2). Pub. L. 95-600, §701(a)(1), inserted “(and whose gross income includes income described in paragraph (4)(B))” after “who has not attained age 65 before the close of the taxable year”.

Subsec. (e)(4)(B). Pub. L. 95-600, §701(a)(2), (3)(B), as amended by Pub. L. 96-222, §107(a)(1)(E)(i), inserted “and who performed the services giving rise to the pension or annuity (or is the spouse of the individual who performed the services)” after “before the close of the taxable year” and substituted reference to paragraph (9)(A) for reference to paragraph (8)(A).

Subsec. (e)(5)(B). Pub. L. 95-600, §701(a)(3)(C), as amended by Pub. L. 96-222, §107(a)(1)(E)(i), substituted reference to paragraph (9)(A) for reference to paragraph (8)(A).

Subsec. (e)(8), (9). Pub. L. 95-600, §701(a)(3)(A), as amended by Pub. L. 96-222, §107(a)(1)(E)(i), added par. (8) and redesignated former par. (8) as (9).

1976—Pub. L. 94-455, §503(a), among other changes, substituted “Credits for the elderly” for “Retirement income” in section catchline and in text substituted provisions permitting taxpayers who have all types of income to be eligible for the tax credit for provisions permitting taxpayers who have only retirement income to be eligible for the tax credit, eliminated provisions requiring taxpayers to earn \$600 for the previous ten years for tax credit eligibility and provisions relating variations in treatment of married couples, and inserted provisions broadening coverage of the tax credit relief to low and middle income taxpayers.

Pub. L. 94-455, §1901(c)(1), purported to amend subsec. (f) of this section by striking out “a Territory”. The amendment could not be executed in view of the prior general amendment of this section by section 503(a) of Pub. L. 94-455. Section 1901(c)(1) was repealed by section 703(j)(11) of Pub. L. 95-600.

1974—Subsec. (c)(1)(E), (F). Pub. L. 93-406 inserted reference in subpar. (E) to retirement bonds described in section 409 and added subpar. (F).

1964—Subsec. (a). Pub. L. 88-272, §§113(a), 201(d)(3), substituted “an amount equal to 17 percent, in the case of a taxable year beginning in 1964, or 15 percent, in the case of a taxable year beginning after December 31, 1964, of the amount received by such individual as retirement income (as defined in subsection (c) and as limited by subsection (d));” for “an amount equal to the amount received by such individual as retirement income (as defined in subsection (c) and as limited by subsection (d)), multiplied by the rate provided in section 1 for the first \$2,000 of taxable income;” and struck out “section 34 (relating to credit for dividends received by individuals)”, before “and section 35”.

Subsecs. (i), (j). Pub. L. 88-272, §202(a), added subsec. (i) and redesignated former subsec. (i) as (j).

1962—Subsec. (c)(1). Pub. L. 87-792 inserted provisions in subpar. (A) requiring inclusion, in the case of an individual who is, or has been, an employee within the meaning of section 401(c)(1), distributions by a trust described in section 401(a) which is exempt from tax under section 501(a), and added subpar. (E).

Subsec. (d). Pub. L. 87-876 increased the limit on retirement income from \$1,200 to \$1,524, lowered the age requirement in par. (2)(A) from 65 to 62, and substituted provisions in par. (2)(B) which reduce the amount of retirement income for individuals who reach age 62, by one-half the amount of earned income in excess of \$1,200 but not in excess of \$1,700, and by the amount received over \$1,700, for provisions which reduced such income by the amount earned over \$1,200 by persons having reached age 65, and which defined income as in subsec. (g) of this section.

1956—Subsec. (d)(2). Act Jan. 28, 1956, reduced from 75 to 72 the age at which there will be no limitation on earned income and increased from \$900 to \$1,200 the amount that an individual over 65 can earn without reducing the \$1,200 on which the retirement credit is computed.

1955—Subsec. (f). Act Aug. 9, 1955, extended the retirement income tax credit to members of the Armed Forces.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99-514 applicable to bonds issued after Aug. 15, 1986, except as otherwise provided, see sections 1311 to 1318 of Pub. L. 99-514, set out as an Effective Date; Transitional Rules note under section 141 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 474(d) of Pub. L. 98-369 applicable to taxable years beginning after Dec. 31, 1983, and to carrybacks from such years, see section 475(a) of Pub. L. 98-369, set out as a note under section 21 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Section 122(d) of Pub. L. 98-21, as amended by Pub. L. 99-514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that:

“(1) IN GENERAL.—The amendments made by this section [amending sections 37 [now 22], 41 [now 24], 44A [now 21], 46, 53, 85, 105, 128, 403, 415, 904, and 7871 of this title] shall apply to taxable years beginning after December 31, 1983.

“(2) TRANSITIONAL RULE.—If an individual’s annuity starting date was deferred under section 105(d)(6) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (as in effect on the day before the date of the enactment of this section [Apr. 20, 1983]), such deferral shall end on the first day of such individual’s first taxable year beginning after December 31, 1983.”

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97-34 applicable with respect to taxable years beginning after Dec. 31, 1981, see section 115 of Pub. L. 97-34, set out as a note under section 911 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Section 701(a)(4) of Pub. L. 95-600 provided that:
“(A) The amendments made by paragraphs (1) and (2) [amending this section] shall apply to taxable years beginning after December 31, 1975.

“(B) The amendments made by paragraph (3) [amending this section] shall apply to taxable years beginning after December 31, 1977.”

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94-455 applicable with respect to taxable years beginning after Dec. 31, 1975, see section 508 of Pub. L. 94-455, set out as a note under section 3 of this title.

EFFECTIVE DATE OF 1974 AMENDMENT

Amendment by Pub. L. 93-406 effective Jan. 1, 1974, see section 2002(i)(2) of Pub. L. 93-406, set out as an Effective Date note under section 4973 of this title.

EFFECTIVE DATE OF 1964 AMENDMENT

Amendment by section 113(a) of Pub. L. 88-272, except for purposes of section 21 [now 15] of this title, effective with respect to taxable years beginning after Dec. 31, 1963, see section 131 of Pub. L. 88-272, set out as a note under section 1 of this title.

Section 201(e) of Pub. L. 88-272 provided that: “The amendments made by subsection (a) [amending section 34 of this title] shall apply with respect to taxable years ending after December 31, 1963. The amendment made by subsection (b) [repealing section 34 of this title] shall apply with respect to taxable years ending after December 31, 1964. The amendment made by subsection (c) [amending section 116 of this title] shall apply with respect to taxable years beginning after December 31, 1963. The amendments made by subsection (d) [amending sections 35, 37 [now 22], 46, 116, 584, 642, 702, 854, 857, 871, 1375, and 6014 of this title] shall apply with respect to dividends received after December 31, 1964, in taxable years ending after such date”.

Section 202(b) of Pub. L. 88-272 provided that: “The amendments made by subsection (a) [amending this section] shall apply to taxable years beginning after December 31, 1963.”

EFFECTIVE DATE OF 1962 AMENDMENTS

Section 2 of Pub. L. 87-876 provided that: “The amendment made by the first section of this Act [amending this section] shall apply only to taxable years ending after the date of the enactment of this Act [Oct. 24, 1962].”

Section 8 of Pub. L. 87-792 provided that: “The amendments made by this Act [enacting sections 405 and 6047 of this title and amending sections 37 [now 22], 62, 72, 101, 104, 105, 172, 401 to 404, 503, 805, 1361, 2039, 2517, 3306, 3401 and 7207 of this title] shall apply to taxable years beginning after December 31, 1962.”

EFFECTIVE DATE OF 1956 AMENDMENT

Section 2 of act Jan. 28, 1956, provided that: “The amendment made by the first section of this Act [amending this section] shall apply only with respect to taxable years beginning after December 31, 1955.”

EFFECTIVE DATE OF 1955 AMENDMENT

Section 2 of act Aug. 9, 1955, provided that: “The amendment made by this Act [amending this section] shall be applicable to taxable years beginning after December 31, 1954.”

DETERMINATION OF RETIREMENT INCOME CREDIT UNDER PROVISIONS AS THEY EXISTED PRIOR TO AMENDMENT BY PUB. L. 94-455 ELECTION

Pub. L. 95-30, title IV, § 403, May 23, 1977, 91 Stat. 155, as amended by Pub. L. 99-514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that: “A taxpayer may elect (at such time and in such manner as the Secretary of the Treasury or his delegate shall prescribe) to determine the amount of his credit under section 37 [now 22] of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] for his first taxable year beginning in 1976 under the provisions of such section as they existed before the amendment made by section 503 of the Tax Reform Act of 1976 [Pub. L. 94-455].”

§ 23. Adoption expenses

(a) Allowance of credit

(1) In general

In the case of an individual, there shall be allowed as a credit against the tax imposed by this chapter the amount of the qualified adop-

tion expenses paid or incurred by the taxpayer.

(2) Year credit allowed

The credit under paragraph (1) with respect to any expense shall be allowed—

(A) in the case of any expense paid or incurred before the taxable year in which such adoption becomes final, for the taxable year following the taxable year during which such expense is paid or incurred, and

(B) in the case of an expense paid or incurred during or after the taxable year in which such adoption becomes final, for the taxable year in which such expense is paid or incurred.

(3) \$10,000 credit for adoption of child with special needs regardless of expenses

In the case of an adoption of a child with special needs which becomes final during a taxable year, the taxpayer shall be treated as having paid during such year qualified adoption expenses with respect to such adoption in an amount equal to the excess (if any) of \$10,000 over the aggregate qualified adoption expenses actually paid or incurred by the taxpayer with respect to such adoption during such taxable year and all prior taxable years.

(b) Limitations

(1) Dollar limitation

The aggregate amount of qualified adoption expenses which may be taken into account under subsection (a) for all taxable years with respect to the adoption of a child by the taxpayer shall not exceed \$10,000.

(2) Income limitation

(A) In general

The amount allowable as a credit under subsection (a) for any taxable year (determined without regard to subsection (c)) shall be reduced (but not below zero) by an amount which bears the same ratio to the amount so allowable (determined without regard to this paragraph but with regard to paragraph (1)) as—

- (i) the amount (if any) by which the taxpayer's adjusted gross income exceeds \$150,000, bears to
- (ii) \$40,000.

(B) Determination of adjusted gross income

For purposes of subparagraph (A), adjusted gross income shall be determined without regard to sections 911, 931, and 933.

(3) Denial of double benefit

(A) In general

No credit shall be allowed under subsection (a) for any expense for which a deduction or credit is allowed under any other provision of this chapter.

(B) Grants

No credit shall be allowed under subsection (a) for any expense to the extent that funds for such expense are received under any Federal, State, or local program.

(4) Limitation based on amount of tax

In the case of a taxable year to which section 26(a)(2) does not apply, the credit allowed

under subsection (a) for any taxable year shall not exceed the excess of—

(A) the sum of the regular tax liability (as defined in section 26(b)) plus the tax imposed by section 55, over

(B) the sum of the credits allowable under this subpart (other than this section and section 25D) and section 27 for the taxable year.

(c) Carryforwards of unused credit

(1) Rule for years in which all personal credits allowed against regular and alternative minimum tax

In the case of a taxable year to which section 26(a)(2) applies, if the credit allowable under subsection (a) for any taxable year exceeds the limitation imposed by section 26(a)(2) for such taxable year reduced by the sum of the credits allowable under this subpart (other than this section and sections 25D and 1400C), such excess shall be carried to the succeeding taxable year and added to the credit allowable under subsection (a) for such taxable year.

(2) Rule for other years

In the case of a taxable year to which section 26(a)(2) does not apply, if the credit allowable under subsection (a) for any taxable year exceeds the limitation imposed by subsection (b)(4) for such taxable year, such excess shall be carried to the succeeding taxable year and added to the credit allowable under subsection (a) for such taxable year.

(3) Limitation

No credit may be carried forward under this subsection to any taxable year following the fifth taxable year after the taxable year in which the credit arose. For purposes of the preceding sentence, credits shall be treated as used on a first-in first-out basis.

(d) Definitions

For purposes of this section—

(1) Qualified adoption expenses

The term “qualified adoption expenses” means reasonable and necessary adoption fees, court costs, attorney fees, and other expenses—

(A) which are directly related to, and the principal purpose of which is for, the legal adoption of an eligible child by the taxpayer,

(B) which are not incurred in violation of State or Federal law or in carrying out any surrogate parenting arrangement,

(C) which are not expenses in connection with the adoption by an individual of a child who is the child of such individual's spouse, and

(D) which are not reimbursed under an employer program or otherwise.

(2) Eligible child

The term “eligible child” means any individual who—

(A) has not attained age 18, or

(B) is physically or mentally incapable of caring for himself.

(3) Child with special needs

The term “child with special needs” means any child if—

(A) a State has determined that the child cannot or should not be returned to the home of his parents,

(B) such State has determined that there exists with respect to the child a specific factor or condition (such as his ethnic background, age, or membership in a minority or sibling group, or the presence of factors such as medical conditions or physical, mental, or emotional handicaps) because of which it is reasonable to conclude that such child cannot be placed with adoptive parents without providing adoption assistance, and

(C) such child is a citizen or resident of the United States (as defined in section 217(h)(3)).

(e) Special rules for foreign adoptions

In the case of an adoption of a child who is not a citizen or resident of the United States (as defined in section 217(h)(3))—

(1) subsection (a) shall not apply to any qualified adoption expense with respect to such adoption unless such adoption becomes final, and

(2) any such expense which is paid or incurred before the taxable year in which such adoption becomes final shall be taken into account under this section as if such expense were paid or incurred during such year.

(f) Filing requirements

(1) Married couples must file joint returns

Rules similar to the rules of paragraphs (2), (3), and (4) of section 21(e) shall apply for purposes of this section.

(2) Taxpayer must include TIN

(A) In general

No credit shall be allowed under this section with respect to any eligible child unless the taxpayer includes (if known) the name, age, and TIN of such child on the return of tax for the taxable year.

(B) Other methods

The Secretary may, in lieu of the information referred to in subparagraph (A), require other information meeting the purposes of subparagraph (A), including identification of an agent assisting with the adoption.

(g) Basis adjustments

For purposes of this subtitle, if a credit is allowed under this section for any expenditure with respect to any property, the increase in the basis of such property which would (but for this subsection) result from such expenditure shall be reduced by the amount of the credit so allowed.

(h) Adjustments for inflation

In the case of a taxable year beginning after December 31, 2002, each of the dollar amounts in subsection (a)(3) and paragraphs (1) and (2)(A)(i) of subsection (b) shall be increased by an amount equal to—

(1) such dollar amount, multiplied by

(2) the cost-of-living adjustment determined under section 1(f)(3) for the calendar year in which the taxable year begins, determined by substituting “calendar year 2001” for “calendar year 1992” in subparagraph (B) thereof.

If any amount as increased under the preceding sentence is not a multiple of \$10, such amount shall be rounded to the nearest multiple of \$10.

(i) Regulations

The Secretary shall prescribe such regulations as may be appropriate to carry out this section and section 137, including regulations which treat unmarried individuals who pay or incur qualified adoption expenses with respect to the same child as 1 taxpayer for purposes of applying the dollar amounts in subsections (a)(3) and (b)(1) of this section and in section 137(b)(1).

(Added Pub. L. 104-188, title I, §1807(a), Aug. 20, 1996, 110 Stat. 1899; amended Pub. L. 105-34, title XVI, §1601(h)(2)(A), (B), Aug. 5, 1997, 111 Stat. 1092; Pub. L. 105-206, title VI, §§6008(d)(6), 6018(f)(1), July 22, 1998, 112 Stat. 812, 823; Pub. L. 107-16, title II, §§201(b)(2)(E), 202(a)(1), (b)(1)(A), (2)(A), (c), (d)(1), (e)(1), (f)(1), (2)(A), June 7, 2001, 115 Stat. 46-49; Pub. L. 107-147, title IV, §§411(c)(1)(A)-(E), 418(a)(1), Mar. 9, 2002, 116 Stat. 45, 57; Pub. L. 109-58, title XIII, §1335(b)(1), Aug. 8, 2005, 119 Stat. 1036; Pub. L. 109-135, title IV, §402(i)(3)(A), (4), Dec. 21, 2005, 119 Stat. 2612, 2615; Pub. L. 110-343, div. B, title I, §106(e)(2)(A), Oct. 3, 2008, 122 Stat. 3817.)

INFLATION ADJUSTED ITEMS FOR CERTAIN YEARS

For inflation adjustment of certain items in this section, see Revenue Procedures listed in a table under section 1 of this title.

AMENDMENT OF SECTION

For termination of amendment by section 106(f)(3) of div. B of Pub. L. 110-343, see Effective and Termination Dates of 2008 Amendment note below.

For termination of amendment by section 402(i)(3)(H) of Pub. L. 109-135, see Effective and Termination Dates of 2005 Amendment note below.

For termination of amendment by section 901 of Pub. L. 107-16, see Effective and Termination Dates of 2001 Amendment note below.

PRIOR PROVISIONS

A prior section 23, added Pub. L. 95-618, title I, §101(a), Nov. 9, 1978, 92 Stat. 3175, §44C; amended Pub. L. 96-223, title II, §§201, 202(a)-(d), 203(a), Apr. 2, 1980, 94 Stat. 256, 258; renumbered §23 and amended Pub. L. 98-369, div. A, title IV, §§471(c), 474(e), title VI, §612(e)(2), July 18, 1984, 98 Stat. 826, 831, 912, related to residential energy credit, prior to repeal by Pub. L. 101-508, title XI, §11801(a)(1), Nov. 5, 1990, 104 Stat. 1388-520.

AMENDMENTS

2008—Subsec. (b)(4)(B). Pub. L. 110-343, §106(e)(2)(A), (f)(3), temporarily inserted “and section 25D” after “this section”. See Effective and Termination Dates of 2008 Amendment note below.

2005—Subsec. (b)(4). Pub. L. 109-135, §402(i)(3)(A)(i), (H), temporarily substituted “In the case of a taxable year to which section 26(a)(2) does not apply, the credit” for “The credit” in introductory provisions. See Effective and Termination Dates of 2005 Amendment note below.

Subsec. (c). Pub. L. 109-135, §402(i)(3)(A)(ii), (H), temporarily reenacted heading without change and amended text generally. Prior to amendment, text read as follows: “If the credit allowable under subsection (a) for any taxable year exceeds the limitation imposed by subsection (b)(4) for such taxable year, such excess

shall be carried to the succeeding taxable year and added to the credit allowable under subsection (a) for such taxable year. No credit may be carried forward under this subsection to any taxable year following the fifth taxable year after the taxable year in which the credit arose. For purposes of the preceding sentence, credits shall be treated as used on a first-in first-out basis." See Effective and Termination Dates of 2005 Amendment note below.

Pub. L. 109-58, § 1335(b)(1), which directed amendment of subsec. (c) by substituting "this section, section 25D, and section 1400C" for "this section and section 1400C", was repealed by Pub. L. 109-135, § 402(i)(4). See Effective and Termination Dates of 2005 Amendment notes below.

2002—Subsec. (a)(1). Pub. L. 107-147, § 411(c)(1)(A), reenacted heading without change and amended text of par. (1) generally. Prior to amendment, text read as follows: "In the case of an individual, there shall be allowed as a credit against the tax imposed by this chapter—

"(A) in the case of an adoption of a child other than a child with special needs, the amount of the qualified adoption expenses paid or incurred by the taxpayer, and

"(B) in the case of an adoption of a child with special needs, \$10,000."

Subsec. (a)(2). Pub. L. 107-147, § 411(c)(1)(C), struck out concluding provisions which read as follows: "In the case of the adoption of a child with special needs, the credit allowed under paragraph (1) shall be allowed for the taxable year in which the adoption becomes final."

Subsec. (a)(3). Pub. L. 107-147, § 411(c)(1)(B), added par. (3).

Subsec. (b)(1). Pub. L. 107-147, § 411(c)(1)(D), substituted "subsection (a)" for "subsection (a)(1)(A)".

Subsec. (h). Pub. L. 107-147, § 418(a)(1), substituted "subsection (a)(3)" for "subsection (a)(1)(B)" in introductory provisions and inserted concluding provisions.

Subsec. (i). Pub. L. 107-147, § 411(c)(1)(E), substituted "the dollar amounts in subsections (a)(3) and (b)(1)" for "the dollar limitation in subsection (b)(1)".

2001—Subsec. (a)(1). Pub. L. 107-16, §§ 202(a)(1), 901, temporarily amended heading and text of par. (1) generally. Prior to amendment, text read as follows: "In the case of an individual, there shall be allowed as a credit against the tax imposed by this chapter the amount of the qualified adoption expenses paid or incurred by the taxpayer." See Effective and Termination Dates of 2001 Amendment note below.

Subsec. (a)(2). Pub. L. 107-16, §§ 202(c), 901, temporarily inserted concluding provisions. See Effective and Termination Dates of 2001 Amendment note below.

Subsec. (b)(1). Pub. L. 107-16, §§ 202(b)(1)(A), 901, temporarily substituted "subsection (a)(1)(A)" for "subsection (a)" and "\$10,000" for "\$5,000" and struck out "\$6,000, in the case of a child with special needs" before period at end. See Effective and Termination Dates of 2001 Amendment note below.

Subsec. (b)(2)(A)(i). Pub. L. 107-16, §§ 202(b)(2)(A), 901, temporarily substituted "\$150,000" for "\$75,000". See Effective and Termination Dates of 2001 Amendment note below.

Subsec. (b)(4). Pub. L. 107-16, §§ 202(f)(1), 901, temporarily added par. (4). See Effective and Termination Dates of 2001 Amendment note below.

Subsec. (c). Pub. L. 107-16, §§ 202(f)(2)(A), 901, temporarily substituted "subsection (b)(4)" for "section 26(a)" and struck out "reduced by the sum of the credits allowable under this subpart (other than this section and sections 24 and 1400C)" before ", such excess". See Effective and Termination Dates of 2001 Amendment note below.

Pub. L. 107-16, §§ 201(b)(2)(E), 901, temporarily substituted "and sections 24 and 1400C" for "and section 1400C". See Effective and Termination Dates of 2001 Amendment note below.

Subsec. (d)(2). Pub. L. 107-16, §§ 202(d)(1), 901, temporarily amended heading and text of par. (2) generally. Prior to amendment, text read as follows: "The term 'eligible child' means any individual—

"(A) who—

"(i) has not attained age 18, or

"(ii) is physically or mentally incapable of caring for himself, and

"(B) in the case of qualified adoption expenses paid or incurred after December 31, 2001, who is a child with special needs."

See Effective and Termination Dates of 2001 Amendment note below.

Subsecs. (h), (i). Pub. L. 107-16, §§ 202(e)(1), 901, temporarily added subsec. (h) and redesignated former subsec. (h) as (i). See Effective and Termination Dates of 2001 Amendment note below.

1998—Subsec. (b)(2)(A). Pub. L. 105-206, § 6018(f)(1), inserted "(determined without regard to subsection (c))" after "for any taxable year" in introductory provisions.

Subsec. (c). Pub. L. 105-206, § 6008(d)(6), inserted "and section 1400C" after "other than this section".

1997—Subsec. (a)(2). Pub. L. 105-34, § 1601(h)(2)(A), amended heading and text of par. (2) generally. Prior to amendment, text read as follows: "The credit under paragraph (1) with respect to any expense shall be allowed—

"(A) for the taxable year following the taxable year during which such expense is paid or incurred, or

"(B) in the case of an expense which is paid or incurred during the taxable year in which the adoption becomes final, for such taxable year."

Subsec. (b)(2)(B). Pub. L. 105-34, § 1601(h)(2)(B), substituted "determined without regard to sections 911, 931, and 933." for "determined—

"(i) without regard to sections 911, 931, and 933, and
"(ii) after the application of sections 86, 135, 137, 219, and 469."

EFFECTIVE AND TERMINATION DATES OF 2008 AMENDMENT

Pub. L. 110-343, div. B, title I, § 106(f), Oct. 3, 2008, 122 Stat. 3817, provided that:

"(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [amending this section and sections 24, 25B, 25D, 26, and 45 of this title] shall apply to taxable years beginning after December 31, 2007.

"(2) SOLAR ELECTRIC PROPERTY LIMITATION.—The amendments made by subsection (b) [amending section 25D of this title] shall apply to taxable years beginning after December 31, 2008.

"(3) APPLICATION OF EGTRRA SUNSET.—The amendments made by subparagraphs (A) and (B) of subsection (e)(2) [amending this section and section 24 of this title] shall be subject to title IX of the Economic Growth and Tax Relief Reconciliation Act of 2001 [Pub. L. 107-16, § 901, set out as an Effective and Termination Dates of 2001 Amendment note under section 1 of this title] in the same manner as the provisions of such Act to which such amendments relate."

EFFECTIVE AND TERMINATION DATES OF 2005 AMENDMENT

Pub. L. 109-135, title IV, § 402(i)(3)(H), Dec. 21, 2005, 119 Stat. 2615, provided that: "The amendments made by this paragraph [amending this section and sections 24, 25, 25B, 25D, 904, and 1400C of this title] (and each part thereof) shall be subject to title IX of the Economic Growth and Tax Relief Reconciliation Act of 2001 [Pub. L. 107-16, § 901, set out as an Effective and Termination Dates of 2001 Amendment note under section 1 of this title] in the same manner as the provisions of such Act to which such amendment (or part thereof) relates."

Pub. L. 109-135, title IV, § 402(i)(4), Dec. 21, 2005, 119 Stat. 2615, struck out Pub. L. 109-58, § 1335(b)(1)-(3), and provided in part that: "The Internal Revenue Code of 1986 shall be applied and administered as if the amendments made [by] such paragraphs [amending this section and sections 25 and 1400C of this title] had never been enacted."

Pub. L. 109-135, title IV, § 402(m), Dec. 21, 2005, 119 Stat. 2615, provided that:

“(1) IN GENERAL.—Except as provided in paragraphs (2) and (3), the amendments made by this section [see Tables for classification] shall take effect as if included in the provisions of the Energy Policy Act of 2005 [Pub. L. 109-58] to which they relate.

“(2) REPEAL OF PUBLIC UTILITY HOLDING COMPANY ACT OF 1935.—The amendments made by subsection (a) [amending sections 121, 246, 247, 1223, 1245, and 1250 of this title and repealing sections 1081 to 1083 of this title] shall not apply with respect to any transaction ordered in compliance with the Public Utility Holding Company Act of 1935 [15 U.S.C. 79 et seq.] before its repeal.

“(3) COORDINATION OF PERSONAL CREDITS.—The amendments made by subsection (i)(3) [amending this section and sections 24, 25, 25B, 25D, 904, and 1400C of this title] shall apply to taxable years beginning after December 31, 2005.”

Pub. L. 109-58, title XIII, §1335(c), Aug. 8, 2005, 119 Stat. 1036, provided that: “The amendments made by this section [enacting section 25D of this title and amending this section and sections 25, 1016, and 1400C of this title] shall apply to property placed in service after December 31, 2005, in taxable years ending after such date.”

EFFECTIVE DATE OF 2002 AMENDMENT

Pub. L. 107-147, title IV, §411(c)(3), Mar. 9, 2002, 116 Stat. 46, provided that: “The amendments made by this subsection [amending this section and section 137 of this title] shall apply to taxable years beginning after December 31, 2002; except that the amendments made by paragraphs (1)(C), (1)(D) [amending this section], and (2)(B) [amending section 137 of this title] shall apply to taxable years beginning after December 31, 2001.”

Amendment by section 418(a)(1) of Pub. L. 107-147 effective as if included in the provisions of the Economic Growth and Tax Relief Reconciliation Act of 2001, Pub. L. 107-16, to which such amendment relates, see section 418(c) of Pub. L. 107-147, set out as a note under section 21 of this title.

EFFECTIVE AND TERMINATION DATES OF 2001 AMENDMENT

Pub. L. 108-311, title III, §312(b)(2), Oct. 4, 2004, 118 Stat. 1181, provided that: “The amendments made by sections 201(b), 202(f), and 618(b) of the Economic Growth and Tax Relief Reconciliation Act of 2001 [Pub. L. 107-16, amending this section and sections 24, 25, 25B, 26, 904, and 1400C of this title] shall not apply to taxable years beginning during 2004 or 2005.”

Pub. L. 107-147, title VI, §601(b)(2), Mar. 9, 2002, 116 Stat. 59, provided that: “The amendments made by sections 201(b), 202(f), and 618(b) of the Economic Growth and Tax Relief Reconciliation Act of 2001 [Pub. L. 107-16, amending this section and sections 24, 25, 25B, 26, 904, and 1400C of this title] shall not apply to taxable years beginning during 2002 and 2003.”

Amendment by section 201(b)(2)(E) of Pub. L. 107-16 applicable to taxable years beginning after Dec. 31, 2001, see section 201(e)(2) of Pub. L. 107-16, set out as a note under section 24 of this title.

Pub. L. 107-16, title II, §202(g), June 7, 2001, 115 Stat. 49, provided that:

“(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [amending this section and sections 24, 26, 137, 904, and 1400C of this title] shall apply to taxable years beginning after December 31, 2001.

“(2) SUBSECTION (a).—The amendments made by subsection (a) [amending this section and section 137 of this title] shall apply to taxable years beginning after December 31, 2002.”

Amendment by Pub. L. 107-16 inapplicable to taxable, plan, or limitation years beginning after Dec. 31, 2010, and the Internal Revenue Code of 1986 to be applied and administered to such years as if such amendment had never been enacted, see section 901 of Pub. L. 107-16, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1998 AMENDMENT

Pub. L. 105-206, title VI, §6018(h), July 22, 1998, 112 Stat. 823, provided that: “The amendments made by this section [amending this section and sections 219, 408, 414, and 679 of this title and amending provisions set out as notes under sections 167 and 4091 of this title] shall take effect as if included in the provisions of the Small Business Job Protection Act of 1996 [Pub. L. 104-188] to which they relate.”

Amendment by section 6008(d)(6) of Pub. L. 105-206 effective, except as otherwise provided, as if included in the provisions of the Taxpayer Relief Act of 1997, Pub. L. 105-34, to which such amendment relates, see section 6024 of Pub. L. 105-206, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Section 1601(j) of Pub. L. 105-34 provided that:

“(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [amending this section, sections 30A, 52, 55, 137, 401, 403, 404, 408, 414, 512, 529, 593, 641, 679, 860L, 956, 1361, 1374, 4001, 4041, 4092, 4261, 6039D, 6048, 6050R, 6501, 6693, 7701, and 9503 of this title, section 1055 of Title 29, Labor, and provisions set out as notes under sections 529 and 4091 of this title] shall take effect as if included in the provisions of the Small Business Job Protection Act of 1996 [Pub. L. 104-188] to which they relate.

“(2) CERTAIN ADMINISTRATIVE REQUIREMENTS WITH RESPECT TO CERTAIN PENSION PLANS.—The amendment made by subsection (d)(2)(D) [amending section 401 of this title] shall apply to calendar years beginning after the date of the enactment of this Act [Aug. 5, 1997].”

EFFECTIVE DATE

Section 1807(e) of Pub. L. 104-188 provided that: “The amendments made by this section [enacting this section and section 137 of this title, renumbering former section 137 of this title as section 138, and amending sections 25, 86, 135, 219, 469, and 1016 of this title] shall apply to taxable years beginning after December 31, 1996.”

EXPENSES PAID OR INCURRED BEFORE 2002

Pub. L. 107-147, title IV, §411(c)(1)(F), Mar. 9, 2002, 116 Stat. 45, provided that: “Expenses paid or incurred during any taxable year beginning before January 1, 2002, may be taken into account in determining the credit under section 23 of the Internal Revenue Code of 1986 only to the extent the aggregate of such expenses does not exceed the applicable limitation under section 23(b)(1) of such Code as in effect on the day before the date of the enactment of the Economic Growth and Tax Relief Reconciliation Act of 2001 [June 7, 2001].”

TAX CREDIT AND GROSS INCOME EXCLUSION STUDY AND REPORT

Section 1807(d) of Pub. L. 104-188 provided that: “The Secretary of the Treasury shall study the effect on adoptions of the tax credit and gross income exclusion established by the amendments made by this section [enacting this section and section 137 of this title, renumbering former section 137 of this title as section 138, and amending sections 25, 86, 135, 219, 469, and 1016 of this title] and shall submit a report regarding the study to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives not later than January 1, 2000.”

§ 24. Child tax credit

(a) Allowance of credit

There shall be allowed as a credit against the tax imposed by this chapter for the taxable year with respect to each qualifying child of the taxpayer for which the taxpayer is allowed a deduction under section 151 an amount equal to \$1,000.

(b) Limitations**(1) Limitation based on adjusted gross income**

The amount of the credit allowable under subsection (a) shall be reduced (but not below zero) by \$50 for each \$1,000 (or fraction thereof) by which the taxpayer's modified adjusted gross income exceeds the threshold amount. For purposes of the preceding sentence, the term "modified adjusted gross income" means adjusted gross income increased by any amount excluded from gross income under section 911, 931, or 933.

(2) Threshold amount

For purposes of paragraph (1), the term "threshold amount" means—

- (A) \$110,000 in the case of a joint return,
- (B) \$75,000 in the case of an individual who is not married, and
- (C) \$55,000 in the case of a married individual filing a separate return.

For purposes of this paragraph, marital status shall be determined under section 7703.

(3) Limitation based on amount of tax

In the case of a taxable year to which section 26(a)(2) does not apply, the credit allowed under subsection (a) for any taxable year shall not exceed the excess of—

- (A) the sum of the regular tax liability (as defined in section 26(b)) plus the tax imposed by section 55, over
- (B) the sum of the credits allowable under this subpart (other than this section and sections 23, 25A(i), 25B, 25D, 30, 30B, and 30D) and section 27 for the taxable year.

(c) Qualifying child

For purposes of this section—

(1) In general

The term "qualifying child" means a qualifying child of the taxpayer (as defined in section 152(c)) who has not attained age 17.

(2) Exception for certain noncitizens

The term "qualifying child" shall not include any individual who would not be a dependent if subparagraph (A) of section 152(b)(3) were applied without regard to all that follows "resident of the United States".

(d) Portion of credit refundable**(1) In general**

The aggregate credits allowed to a taxpayer under subpart C shall be increased by the lesser of—

- (A) the credit which would be allowed under this section without regard to this subsection and the limitation under section 26(a)(2) or subsection (b)(3), as the case may be, or
- (B) the amount by which the aggregate amount of credits allowed by this subpart (determined without regard to this subsection) would increase if the limitation imposed by section 26(a)(2) or subsection (b)(3), as the case may be, were increased by the greater of—

- (i) 15 percent of so much of the taxpayer's earned income (within the meaning of section 32) which is taken into ac-

count in computing taxable income for the taxable year as exceeds \$10,000, or

(ii) in the case of a taxpayer with 3 or more qualifying children, the excess (if any) of—

- (I) the taxpayer's social security taxes for the taxable year, over
- (II) the credit allowed under section 32 for the taxable year.

The amount of the credit allowed under this subsection shall not be treated as a credit allowed under this subpart and shall reduce the amount of credit otherwise allowable under subsection (a) without regard to section 26(a)(2) or subsection (b)(3), as the case may be. For purposes of subparagraph (B), any amount excluded from gross income by reason of section 112 shall be treated as earned income which is taken into account in computing taxable income for the taxable year.

(2) Social security taxes

For purposes of paragraph (1)—

(A) In general

The term "social security taxes" means, with respect to any taxpayer for any taxable year—

- (i) the amount of the taxes imposed by sections 3101 and 3201(a) on amounts received by the taxpayer during the calendar year in which the taxable year begins,
- (ii) 50 percent of the taxes imposed by section 1401 on the self-employment income of the taxpayer for the taxable year, and
- (iii) 50 percent of the taxes imposed by section 3211(a) on amounts received by the taxpayer during the calendar year in which the taxable year begins.

(B) Coordination with special refund of social security taxes

The term "social security taxes" shall not include any taxes to the extent the taxpayer is entitled to a special refund of such taxes under section 6413(c).

(C) Special rule

Any amounts paid pursuant to an agreement under section 3121(l) (relating to agreements entered into by American employers with respect to foreign affiliates) which are equivalent to the taxes referred to in subparagraph (A)(i) shall be treated as taxes referred to in such subparagraph.

(3) Inflation adjustment

In the case of any taxable year beginning in a calendar year after 2001, the \$10,000 amount contained in paragraph (1)(B) shall be increased by an amount equal to—

- (A) such dollar amount, multiplied by
- (B) the cost-of-living adjustment determined under section 1(f)(3) for the calendar year in which the taxable year begins, determined by substituting "calendar year 2000" for "calendar year 1992" in subparagraph (B) thereof.

Any increase determined under the preceding sentence shall be rounded to the nearest multiple of \$50.

(4) Special rule for 2009 and 2010

Notwithstanding paragraph (3), in the case of any taxable year beginning in 2009 or 2010, the dollar amount in effect for such taxable year under paragraph (1)(B)(i) shall be \$3,000.

(e) Identification requirement

No credit shall be allowed under this section to a taxpayer with respect to any qualifying child unless the taxpayer includes the name and taxpayer identification number of such qualifying child on the return of tax for the taxable year.

(f) Taxable year must be full taxable year

Except in the case of a taxable year closed by reason of the death of the taxpayer, no credit shall be allowable under this section in the case of a taxable year covering a period of less than 12 months.

(Added Pub. L. 105-34, title I, §101(a), Aug. 5, 1997, 111 Stat. 796; amended Pub. L. 105-206, title VI, §6003(a), July 22, 1998, 112 Stat. 790; Pub. L. 105-277, div. J, title II, §2001(b), Oct. 21, 1998, 112 Stat. 2681-901; Pub. L. 106-170, title V, §501(b)(1), Dec. 17, 1999, 113 Stat. 1919; Pub. L. 107-16, title II, §§201(a)-(b)(2)(C), (c)(1), (2), (d), 202(f)(2)(B), title VI, §618(b)(2)(A), June 7, 2001, 115 Stat. 45-47, 49, 108; Pub. L. 107-90, title II, §204(e)(1), Dec. 21, 2001, 115 Stat. 893; Pub. L. 107-147, title IV, §§411(b), 417(23)(A), Mar. 9, 2002, 116 Stat. 45, 57; Pub. L. 108-27, title I, §101(a), May 28, 2003, 117 Stat. 753; Pub. L. 108-311, title I, §§101(a), 102(a), 104(a), title II, §204, title IV, §408(b)(4), Oct. 4, 2004, 118 Stat. 1167, 1168, 1176, 1192; Pub. L. 109-135, title IV, §402(i)(3)(B), Dec. 21, 2005, 119 Stat. 2613; Pub. L. 110-172, §11(c)(1), Dec. 29, 2007, 121 Stat. 2488; Pub. L. 110-343, div. B, title I, §106(e)(2)(B), title II, §205(d)(1)(A), div. C, title V, §501(a), Oct. 3, 2008, 122 Stat. 3817, 3838, 3876; Pub. L. 110-351, title V, §501(c)(1), Oct. 7, 2008, 122 Stat. 3979; Pub. L. 111-5, div. B, title I, §§1003(a), 1004(b)(1), 1142(b)(1)(A), 1144(b)(1)(A), Feb. 17, 2009, 123 Stat. 313, 314, 330, 332.)

INFLATION ADJUSTED ITEMS FOR CERTAIN YEARS

For inflation adjustment of certain items in this section, see Revenue Procedures listed in a table under section 1 of this title.

AMENDMENT OF SECTION

For termination of amendment by sections 1004(e), 1142(e), and 1144(d) of Pub. L. 111-5, see Effective and Termination Dates of 2009 Amendment notes below.

For termination of amendment by sections 106(f)(3) and 205(f) of Pub. L. 110-343, see Effective and Termination Dates of 2008 Amendment notes below.

For termination of amendment by section 402(i)(3)(H) of Pub. L. 109-135, see Effective and Termination Dates of 2005 Amendment note below.

For termination of amendment by section 105 of Pub. L. 108-311, see Effective and Termination Dates of 2004 Amendment note below.

For termination of amendment by section 107 of Pub. L. 108-27, see Effective and Termination Dates of 2003 Amendment note below.

For termination of amendment by section 901 of Pub. L. 107-16, see Effective and Termination Dates of 2001 Amendments note below.

PRIOR PROVISIONS

A prior section 24, added Pub. L. 92-178, title VII, §701(a), Dec. 10, 1971, 85 Stat. 560, §41; amended Pub. L. 93-625, §§11(a)-(c), (e), 12(a), Jan. 3, 1975, 88 Stat. 2119, 2120; Pub. L. 94-455, title V, §503(b)(4), title XIX, §§1901(b)(1)(B), (H)(ii), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1562, 1790, 1791, 1834; Pub. L. 95-600, title I, §113(c), Nov. 6, 1978, 92 Stat. 2778; Pub. L. 97-473, title II, §202(b)(1), Jan. 14, 1983, 96 Stat. 2609; Pub. L. 98-21, title I, §122(c)(1), Apr. 20, 1983, 97 Stat. 87; renumbered §24 and amended Pub. L. 98-369, div. A, title IV, §§471(c), 474(f), July 18, 1984, 98 Stat. 826, 831, related to contributions to candidates for public office, prior to repeal by Pub. L. 99-514, title I, §§112(a), 151(a), Oct. 22, 1986, 100 Stat. 2108, 2121, applicable to taxable years beginning after Dec. 31, 1986.

AMENDMENTS

2009—Subsec. (b)(3)(B). Pub. L. 111-5, §1144(b)(1)(A), (d), temporarily inserted “30B,” after “30.” See Effective and Termination Dates of 2009 Amendment note below.

Pub. L. 111-5, §1142(b)(1)(A), (e), temporarily inserted “30,” after “25D.” See Effective and Termination Dates of 2009 Amendment note below.

Pub. L. 111-5, §1004(b)(1), (e), temporarily inserted “25A(i),” after “23.” See Effective and Termination Dates of 2009 Amendment note below.

Subsec. (d)(4). Pub. L. 111-5, §1003(a), amended par. (4) generally. Prior to amendment, text read as follows: “Notwithstanding paragraph (3), in the case of any taxable year beginning in 2008, the dollar amount in effect for such taxable year under paragraph (1)(B)(i) shall be \$8,500.”

2008—Subsec. (a). Pub. L. 110-351 inserted “for which the taxpayer is allowed a deduction under section 151” after “of the taxpayer”.

Subsec. (b)(3)(B). Pub. L. 110-343, §205(d)(1)(A), (f), temporarily substituted “25D, and 30D” for “and 25D”. See Effective and Termination Dates of 2008 Amendment note below.

Pub. L. 110-343, §106(e)(2)(B), (f)(3), temporarily substituted “, 25B, and 25D” for “and 25B”. See Effective and Termination Dates of 2008 Amendment note below.

Subsec. (d)(4). Pub. L. 110-343, §501(a), added par. (4). 2007—Subsec. (d)(1)(B). Pub. L. 110-172, §11(c)(1)(A), substituted “the greater of” for “the excess (if any)” in introductory provisions.

Subsec. (d)(1)(B)(ii)(II). Pub. L. 110-172, §11(c)(1)(B), substituted “section 32” for “section”.

2005—Subsec. (b)(3). Pub. L. 109-135, §402(i)(3)(B)(i), (H), temporarily substituted “In the case of a taxable year to which section 26(a)(2) does not apply, the credit” for “The credit” in introductory provisions. See Effective and Termination Dates of 2005 Amendment note below.

Subsec. (d)(1). Pub. L. 109-135, §402(i)(3)(B)(ii), (H), temporarily reenacted heading without change and amended text generally. Prior to amendment, text read as follows: “The aggregate credits allowed to a taxpayer under subpart C shall be increased by the lesser of—

“(A) the credit which would be allowed under this section without regard to this subsection and the limitation under subsection (b)(3), or

“(B) the amount by which the amount of credit allowed by this section (determined without regard to this subsection) would increase if the limitation imposed by subsection (b)(3) were increased by the greater of—

“(i) 15 percent of so much of the taxpayer’s earned income (within the meaning of section 32) which is taken into account in computing taxable income for the taxable year as exceeds \$10,000, or

“(ii) in the case of a taxpayer with 3 or more qualifying children, the excess (if any) of—

“(I) the taxpayer’s social security taxes for the taxable year, over

“(II) the credit allowed under section 32 for the taxable year.

The amount of the credit allowed under this subsection shall not be treated as a credit allowed under this subpart and shall reduce the amount of credit otherwise allowable under subsection (a) without regard to subsection (b)(3). For purposes of subparagraph (B), any amount excluded from gross income by reason of section 112 shall be treated as earned income which is taken into account in computing taxable income for the taxable year." See Effective and Termination Dates of 2005 Amendment note below.

2004—Subsec. (a). Pub. L. 108-311, §§101(a), 105, temporarily reenacted heading without change and amended text generally, substituting provisions relating to \$1,000 per year credit per qualifying child for provisions relating to different credit amounts for calendar years 2003 through 2010 or thereafter. See Effective and Termination Dates of 2004 Amendment note below.

Subsec. (c)(1). Pub. L. 108-311, §204(a), reenacted heading without change and amended text generally. Prior to amendment, text read as follows: "The term 'qualifying child' means any individual if—

"(A) the taxpayer is allowed a deduction under section 151 with respect to such individual for the taxable year.

"(B) such individual has not attained the age of 17 as of the close of the calendar year in which the taxable year of the taxpayer begins, and

"(C) such individual bears a relationship to the taxpayer described in section 32(c)(3)(B)."

Subsec. (c)(2). Pub. L. 108-311, §204(b), substituted "subparagraph (A) of section 152(b)(3)" for "the first sentence of section 152(b)(3)".

Subsec. (d)(1). Pub. L. 108-311, §§104(a), 105, temporarily inserted at end of concluding provisions "For purposes of subparagraph (B), any amount excluded from gross income by reason of section 112 shall be treated as earned income which is taken into account in computing taxable income for the taxable year." See Effective and Termination Dates of 2004 Amendment note below.

Subsec. (d)(1)(B)(i). Pub. L. 108-311, §§102(a), 105, temporarily struck out "(10 percent in the case of taxable years beginning before January 1, 2005)" after "15 percent". See Effective and Termination Dates of 2004 Amendment note below.

Subsec. (d)(2)(A)(iii). Pub. L. 108-311, §408(b)(4), amended directory language of Pub. L. 107-90. See 2001 Amendment note below.

2003—Subsec. (a)(2). Pub. L. 108-27, §§101(a), 107, temporarily amended table by deleting items relating to calendar years 2001 and 2002 and increasing per child amount from \$600 to \$1,000 for calendar years 2003 or 2004. See Effective and Termination Dates of 2003 Amendment note below.

2002—Subsec. (b)(3)(B). Pub. L. 107-147, §417(23)(A), amended directory language of Pub. L. 107-16, §618(b)(2)(A). See 2001 Amendment note below.

Subsec. (d)(1)(B). Pub. L. 107-147, §411(b), substituted "aggregate amount of credits allowed by this subpart" for "amount of credit allowed by this section" in introductory provisions.

2001—Subsec. (a). Pub. L. 107-16, §§201(a), 901, temporarily amended heading and text of subsec. (a) generally. Prior to amendment, text read as follows: "There shall be allowed as a credit against the tax imposed by this chapter for the taxable year with respect to each qualifying child of the taxpayer an amount equal to \$500 (\$400 in the case of taxable years beginning in 1998)." See Effective and Termination Dates of 2001 Amendments note below.

Subsec. (b). Pub. L. 107-16, §§201(b)(2)(A), 901, temporarily amended heading generally, substituting "Limitations" for "Limitation based on adjusted gross income". See Effective and Termination Dates of 2001 Amendments note below.

Subsec. (b)(1). Pub. L. 107-16, §§201(b)(2)(B), 901, temporarily amended heading generally, substituting "Limitation based on adjusted gross income" for "In general". See Effective and Termination Dates of 2001 Amendments note below.

Subsec. (b)(3). Pub. L. 107-16, §§201(b)(1), 901, temporarily added par. (3). See Effective and Termination Dates of 2001 Amendments note below.

Subsec. (b)(3)(B). Pub. L. 107-16, §618(b)(2)(A), as amended by Pub. L. 107-147, §417(23)(A), substituted "sections 23 and 25B" for "section 23".

Pub. L. 107-16, §§202(f)(2)(B), 901, temporarily substituted "this section and section 23" for "this section". See Effective and Termination Dates of 2001 Amendments note below.

Subsec. (d). Pub. L. 107-16, §§201(c)(1), 901, temporarily amended subsec. heading and heading and text of par. (1) generally. Prior to amendment, text read as follows: "In the case of a taxpayer with three or more qualifying children for any taxable year, the aggregate credits allowed under subpart C shall be increased by the lesser of—

"(A) the credit which would be allowed under this section without regard to this subsection and the limitation under section 26(a); or

"(B) the amount by which the aggregate amount of credits allowed by this subpart (without regard to this subsection) would increase if the limitation imposed by section 26(a) were increased by the excess (if any) of—

"(i) the taxpayer's Social Security taxes for the taxable year, over

"(ii) the credit allowed under section 32 (determined without regard to subsection (n)) for the taxable year.

The amount of the credit allowed under this subsection shall not be treated as a credit allowed under this subpart and shall reduce the amount of credit otherwise allowable under subsection (a) without regard to section 26(a)." See Effective and Termination Dates of 2001 Amendments note below.

Subsec. (d)(1). Pub. L. 107-16, §§201(b)(2)(C)(i), 901, temporarily substituted "subsection (b)(3)" for "section 26(a)" wherever appearing in subsec. (d), as amended by Pub. L. 107-16, §201(c). See Effective and Termination Dates of 2001 Amendments note below.

Subsec. (d)(1)(B). Pub. L. 107-16, §§201(b)(2)(C)(ii), 901, temporarily substituted "amount of credit allowed by this section" for "aggregate amount of credits allowed by this subpart" in subpar. (B) as amended by Pub. L. 107-16, §201(c). See Effective and Termination Dates of 2001 Amendments note below.

Subsec. (d)(2). Pub. L. 107-16, §§201(d), 901, temporarily redesignated par. (3) as (2) and struck out heading and text of former par. (2). Text read as follows: "For taxable years beginning after December 31, 2001, the credit determined under this subsection for the taxable year shall be reduced by the excess (if any) of—

"(A) the amount of tax imposed by section 55 (relating to alternative minimum tax) with respect to such taxpayer for such taxable year, over

"(B) the amount of the reduction under section 32(h) with respect to such taxpayer for such taxable year." See Effective and Termination Dates of 2001 Amendments note below.

Subsec. (d)(2)(A)(iii). Pub. L. 107-90, as amended by Pub. L. 108-311, §408(b)(4), substituted "section 3211(a)" for "section 3211(a)(1)".

Subsec. (d)(3). Pub. L. 107-16, §§201(d)(2), 901, temporarily redesignated par. (4) as (3). Former par. (3) temporarily redesignated (2). See Effective and Termination Dates of 2001 Amendments note below.

Subsec. (d)(4). Pub. L. 107-16, §§201(c)(2), 901, temporarily added par. (4). Former par. (4) temporarily redesignated (3). See Effective and Termination Dates of 2001 Amendments note below.

1999—Subsec. (d)(2). Pub. L. 106-170 substituted "2001" for "1998" in introductory provisions.

1998—Subsec. (d)(1). Pub. L. 105-206, §6003(a)(1)(C), added par. (1) and struck out heading and text of former par. (1). Text read as follows: "In the case of a taxpayer with 3 or more qualifying children for any taxable year, the amount of the credit allowed under this section shall be equal to the greater of—

"(A) the amount of the credit allowed under this section (without regard to this subsection and after application of the limitation under section 26), or

“(B) the alternative credit amount determined under paragraph (2).”

Subsec. (d)(2). Pub. L. 105-277 substituted “For taxable years beginning after December 31, 1998, the credit” for “The credit”.

Pub. L. 105-206, §6003(a)(1)(C), added par. (2) and struck out heading and text of former par. (2). Text read as follows: “For purposes of this subsection, the alternative credit amount is the amount of the credit which would be allowed under this section if the limitation under paragraph (3) were applied in lieu of the limitation under section 26.”

Subsec. (d)(3). Pub. L. 105-206, §6003(a)(1)(A), (B), (2), redesignated par. (5) as (3), substituted “paragraph (1)” for “paragraph (3)” in introductory provisions, and struck out heading and text of former par. (3). Text read as follows: “The limitation under this paragraph for any taxable year is the limitation under section 26 (without regard to this subsection)—

“(A) increased by the taxpayer’s social security taxes for such taxable year, and

“(B) reduced by the sum of—

“(i) the credits allowed under this part other than under subpart C or this section, and

“(ii) the credit allowed under section 32 without regard to subsection (m) thereof.”

Subsec. (d)(4). Pub. L. 105-206, §6003(a)(1)(A), struck out heading and text of par. (4). Text read as follows: “If the amount of the credit under paragraph (1)(B) exceeds the amount of the credit under paragraph (1)(A), such excess shall be treated as a credit to which subpart C applies. The rule of section 32(h) shall apply to such excess.”

Subsec. (d)(5). Pub. L. 105-206, §6003(a)(1)(B), redesignated par. (5) as (3).

EFFECTIVE AND TERMINATION DATES OF 2009 AMENDMENT

Pub. L. 111-5, div. B, title I, §1003(b), Feb. 17, 2009, 123 Stat. 313, provided that: “The amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 2008.”

Pub. L. 111-5, div. B, title I, §1004(d), Feb. 17, 2009, 123 Stat. 315, provided that: “The amendments made by this section [amending this section, sections 25 to 25B, 26, 904, 1400C, and 6211 of this title, and section 1324 of Title 31, Money and Finance] shall apply to taxable years beginning after December 31, 2008.”

Pub. L. 111-5, div. B, title I, §1004(e), Feb. 17, 2009, 123 Stat. 315, provided that: “The amendment made by subsection (b)(1) [amending this section] shall be subject to title IX of the Economic Growth and Tax Relief Reconciliation Act of 2001 [Pub. L. 107-16, §901, set out as an Effective and Termination Dates of 2001 Amendment note under section 1 of this title] in the same manner as the provision of such Act to which such amendment relates.”

Pub. L. 111-5, div. B, title I, §1142(c), Feb. 17, 2009, 123 Stat. 331, provided that: “The amendments made by this section [amending this section and sections 25, 25B, 26, 30, 30B, 30C, 53, 55, 904, 1016, 1400C, and 6501 of this title] shall apply to vehicles acquired after the date of the enactment of this Act [Feb. 17, 2009].”

Pub. L. 111-5, div. B, title I, §1142(e), Feb. 17, 2009, 123 Stat. 331, provided that: “The amendment made by subsection (b)(1)(A) [amending this section] shall be subject to title IX of the Economic Growth and Tax Relief Reconciliation Act of 2001 [Pub. L. 107-16, §901, set out as an Effective and Termination Dates of 2001 Amendment note under section 1 of this title] in the same manner as the provision of such Act to which such amendment relates.”

Pub. L. 111-5, div. B, title I, §1144(c), Feb. 17, 2009, 123 Stat. 333, provided that: “The amendments made by this section [amending this section and sections 25, 25B, 26, 30B, 30C, 55, 904, and 1400C of this title] shall apply to taxable years beginning after December 31, 2008.”

Pub. L. 111-5, div. B, title I, §1144(d), Feb. 17, 2009, 123 Stat. 333, provided that: “The amendment made by subsection (b)(1)(A) [amending this section] shall be sub-

ject to title IX of the Economic Growth and Tax Relief Reconciliation Act of 2001 [Pub. L. 107-16, §901, set out as an Effective and Termination Dates of 2001 Amendment note under section 1 of this title] in the same manner as the provision of such Act to which such amendment relates.”

EFFECTIVE AND TERMINATION DATES OF 2008 AMENDMENT

Pub. L. 110-351, title V, §501(d), Oct. 7, 2008, 122 Stat. 3980, provided that: “The amendments made by this section [amending this section and section 152 of this title] shall apply to taxable years beginning after December 31, 2008.”

Amendment by section 106(e)(2)(B) of title I of div. B of Pub. L. 110-343 applicable to taxable years beginning after Dec. 31, 2007, and subject to title IX of the Economic Growth and Tax Relief Reconciliation Act of 2001, Pub. L. 107-16, §901, in the same manner as the provisions of such Act to which such amendment relates, see section 106(f)(1), (3) of Pub. L. 110-343, set out as a note under section 23 of this title.

Pub. L. 110-343, div. B, title II, §205(e), (f), Oct. 3, 2008, 122 Stat. 3839, provided that:

“(e) EFFECTIVE DATE.—The amendments made by this section [enacting section 30D of this title and amending this section and sections 25, 25B, 26, 30B, 38, 1016, 1400C, and 6501 of this title] shall apply to taxable years beginning after December 31, 2008.

“(f) APPLICATION OF EGTRRA SUNSET.—The amendment made by subsection (d)(1)(A) [amending this section] shall be subject to title IX of the Economic Growth and Tax Relief Reconciliation Act of 2001 [Pub. L. 107-16, §901, set out as an Effective and Termination Dates of 2001 Amendment note under section 1 of this title] in the same manner as the provision of such Act to which such amendment relates.”

Pub. L. 110-343, div. C, title V, §501(b), Oct. 3, 2008, 122 Stat. 3876, provided that: “The amendment made by this section [amending this section] shall apply to taxable years beginning after December 31, 2007.”

EFFECTIVE DATE OF 2007 AMENDMENT

Pub. L. 110-172, §11(c)(2), Dec. 29, 2007, 121 Stat. 2489, provided that: “The amendments made by this subsection [amending this section] shall take effect as if included in the provisions of the Gulf Opportunity Zone Act of 2005 [Pub. L. 109-135] to which they relate.”

EFFECTIVE AND TERMINATION DATES OF 2005 AMENDMENT

Amendment by Pub. L. 109-135 subject to title IX of the Economic Growth and Tax Relief Reconciliation Act of 2001, Pub. L. 107-16, §901, in the same manner as the provisions of such Act to which such amendment relates, see section 402(i)(3)(H) of Pub. L. 109-135, set out as a note under section 23 of this title.

Amendment by Pub. L. 109-135 effective as if included in the provisions of the Energy Policy Act of 2005, Pub. L. 109-58, to which it relates and applicable to taxable years beginning after Dec. 31, 2005, see section 402(m) of Pub. L. 109-135, set out as a note under section 23 of this title.

EFFECTIVE AND TERMINATION DATES OF 2004 AMENDMENT

Amendment by section 101(a) of Pub. L. 108-311 applicable to taxable years beginning after Dec. 31, 2003, see section 101(e) of Pub. L. 108-311, set out as a note under section 1 of this title.

Pub. L. 108-311, title I, §102(b), Oct. 4, 2004, 118 Stat. 1168, provided that: “The amendment made by this section [amending this section] shall apply to taxable years beginning after December 31, 2003.”

Pub. L. 108-311, title I, §104(c)(1), Oct. 4, 2004, 118 Stat. 1169, provided that: “The amendment made by subsection (a) [amending this section] shall apply to taxable years beginning after December 31, 2003.”

Amendment by title I of Pub. L. 108-311 subject to title IX of the Economic Growth and Tax Relief Rec-

conciliation Act of 2001, Pub. L. 107-16, §901, to the same extent and in the same manner as the provisions of such Act to which such amendments relate, see section 105 of Pub. L. 108-311, set out as a note under section 1 of this title.

Amendment by section 204 of Pub. L. 108-311 applicable to taxable years beginning after Dec. 31, 2004, see section 208 of Pub. L. 108-311, set out as a note under section 2 of this title.

EFFECTIVE AND TERMINATION DATES OF 2003
AMENDMENT

Pub. L. 108-27, title I, §101(c), May 28, 2003, 117 Stat. 754, provided that:

“(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [enacting section 6429 of this title and amending this section] shall apply to taxable years beginning after December 31, 2002.

“(2) SUBSECTION (b).—The amendments made by subsection (b) [enacting section 6429 of this title] shall take effect on the date of the enactment of this Act [May 28, 2003].”

Amendments by title I of Pub. L. 108-27 subject to title IX of the Economic Growth and Tax Relief Reconciliation Act of 2001, Pub. L. 107-16, §901, to the same extent and in the same manner as the provisions of such Act to which such amendments relate, see section 107 of Pub. L. 108-27, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by section 411(b) of Pub. L. 107-147 effective as if included in the provisions of the Economic Growth and Tax Relief Reconciliation Act of 2001, Pub. L. 107-16, to which such amendment relates, see section 411(x) of Pub. L. 107-147, set out as a note under section 25B of this title.

EFFECTIVE AND TERMINATION DATES OF 2001
AMENDMENT

Amendment by sections 201(b), 202(f), and 618(b) of Pub. L. 107-16 inapplicable to taxable years beginning during 2004 or 2005, see section 312(b)(2) of Pub. L. 108-311, set out as a note under section 23 of this title.

Amendment by sections 201(b), 202(f), and 618(b) of Pub. L. 107-16 inapplicable to taxable years beginning during 2002 and 2003, see section 601(b)(2) of Pub. L. 107-147, set out as a note under section 23 of this title.

Pub. L. 107-90, title II, §204(f), Dec. 21, 2001, 115 Stat. 893, provided that: “The amendments made by this section [enacting subchapter E of chapter 22 of this title and amending this section and sections 72, 3201, 3211, 3221, and 3231 of this title] shall apply to calendar years beginning after December 31, 2001.”

Pub. L. 107-16, title II, §201(e), June 7, 2001, 115 Stat. 47, provided that:

“(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [amending this section and sections 23, 25, 26, 32, 904, and 1400C of this title] shall apply to taxable years beginning after December 31, 2000.

“(2) SUBSECTION (b).—The amendments made by subsection (b) [amending this section and sections 23, 25, 26, 904, and 1400C of this title] shall apply to taxable years beginning after December 31, 2001.”

Amendment by section 202(f)(2)(B) of Pub. L. 107-16 applicable to taxable years beginning after Dec. 31, 2001, see section 202(g)(1) of Pub. L. 107-16, set out as a note under section 23 of this title.

Pub. L. 107-16, title VI, §618(d), June 7, 2001, 115 Stat. 108, provided that: “The amendments made by this section [enacting section 25B of this title and amending this section and sections 25, 25B, 26, 904, and 1400C of this title] shall apply to taxable years beginning after December 31, 2001.”

Amendment by sections 201(a)–(b)(2)(C), (c)(1), (2), (d) and 202(f)(2)(B) of Pub. L. 107-16 inapplicable to taxable, plan, or limitation years beginning after Dec. 31, 2010, and the Internal Revenue Code of 1986 to be applied and

administered to such years as if such amendment had never been enacted, see section 901 of Pub. L. 107-16, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1999 AMENDMENT

Pub. L. 106-170, title V, §501(c), Dec. 17, 1999, 113 Stat. 1919, provided that: “The amendments made by this section [amending this section and sections 26 and 904 of this title] shall apply to taxable years beginning after December 31, 1998.”

EFFECTIVE DATE OF 1998 AMENDMENTS

Pub. L. 105-277, div. J, title II, §2001(c), Oct. 21, 1998, 112 Stat. 2681-901, provided that: “The amendments made by this section [amending this section and section 26 of this title] shall apply to taxable years beginning after December 31, 1997.”

Amendment by Pub. L. 105-206 effective, except as otherwise provided, as if included in the provisions of the Taxpayer Relief Act of 1997, Pub. L. 105-34, to which such amendment relates, see section 6024 of Pub. L. 105-206, set out as a note under section 1 of this title.

EFFECTIVE DATE

Section 101(e) of Pub. L. 105-34 provided that: “The amendments made by this section [enacting this section and amending sections 32, 501, and 6213 of this title and section 1324 of Title 31, Money and Finance] shall apply to taxable years beginning after December 31, 1997.”

REFUNDS DISREGARDED IN ADMINISTRATION OF
FEDERAL AND FEDERALLY ASSISTED PROGRAMS

Pub. L. 107-16, title II, §203, June 7, 2001, 115 Stat. 49, provided that: “Any payment considered to have been made to any individual by reason of section 24 of the Internal Revenue Code of 1986, as amended by section 201, shall not be taken into account as income and shall not be taken into account as resources for the month of receipt and the following month, for purposes of determining the eligibility of such individual or any other individual for benefits or assistance, or the amount or extent of benefits or assistance, under any Federal program or under any State or local program financed in whole or in part with Federal funds.”

§ 25. Interest on certain home mortgages

(a) Allowance of credit

(1) In general

There shall be allowed as a credit against the tax imposed by this chapter for the taxable year an amount equal to the product of—

- (A) the certificate credit rate, and
- (B) the interest paid or accrued by the taxpayer during the taxable year on the remaining principal of the certified indebtedness amount.

(2) Limitation where credit rate exceeds 20 percent

(A) In general

If the certificate credit rate exceeds 20 percent, the amount of the credit allowed to the taxpayer under paragraph (1) for any taxable year shall not exceed \$2,000.

(B) Special rule where 2 or more persons hold interests in residence

If 2 or more persons hold interests in any residence, the limitation of subparagraph (A) shall be allocated among such persons in proportion to their respective interests in the residence.

(b) Certificate credit rate; certified indebtedness amount

For purposes of this section—

(1) Certificate credit rate

The term “certificate credit rate” means the rate of the credit allowable by this section which is specified in the mortgage credit certificate.

(2) Certified indebtedness amount

The term “certified indebtedness amount” means the amount of indebtedness which is—

(A) incurred by the taxpayer—

(i) to acquire the principal residence of the taxpayer,

(ii) as a qualified home improvement loan (as defined in section 143(k)(4)) with respect to such residence, or

(iii) as a qualified rehabilitation loan (as defined in section 143(k)(5)) with respect to such residence, and

(B) specified in the mortgage credit certificate.

(c) Mortgage credit certificate; qualified mortgage credit certificate program

For purposes of this section—

(1) Mortgage credit certificate

The term “mortgage credit certificate” means any certificate which—

(A) is issued under a qualified mortgage credit certificate program by the State or political subdivision having the authority to issue a qualified mortgage bond to provide financing on the principal residence of the taxpayer,

(B) is issued to the taxpayer in connection with the acquisition, qualified rehabilitation, or qualified home improvement of the taxpayer’s principal residence,

(C) specifies—

(i) the certificate credit rate, and

(ii) the certified indebtedness amount, and

(D) is in such form as the Secretary may prescribe.

(2) Qualified mortgage credit certificate program**(A) In general**

The term “qualified mortgage credit certificate program” means any program—

(i) which is established by a State or political subdivision thereof for any calendar year for which it is authorized to issue qualified mortgage bonds,

(ii) under which the issuing authority elects (in such manner and form as the Secretary may prescribe) not to issue an amount of private activity bonds which it may otherwise issue during such calendar year under section 146,

(iii) under which the indebtedness certified by mortgage credit certificates meets the requirements of the following subsections of section 143 (as modified by subparagraph (B) of this paragraph):

(I) subsection (c) (relating to residence requirements),

(II) subsection (d) (relating to 3-year requirement),

(III) subsection (e) (relating to purchase price requirement),

(IV) subsection (f) (relating to income requirements),

(V) subsection (h) (relating to portion of loans required to be placed in targeted areas), and

(VI) paragraph (1) of subsection (i) (relating to other requirements),

(iv) under which no mortgage credit certificate may be issued with respect to any residence any of the financing of which is provided from the proceeds of a qualified mortgage bond or a qualified veterans’ mortgage bond,

(v) except to the extent provided in regulations, which is not limited to indebtedness incurred from particular lenders,

(vi) except to the extent provided in regulations, which provides that a mortgage credit certificate is not transferrable, and

(vii) if the issuing authority allocates a block of mortgage credit certificates for use in connection with a particular development, which requires the developer to furnish to the issuing authority and the homebuyer a certificate that the price for the residence is no higher than it would be without the use of a mortgage credit certificate.

Under regulations, rules similar to the rules of subparagraphs (B) and (C) of section 143(a)(2) shall apply to the requirements of this subparagraph.

(B) Modifications of section 143

Under regulations prescribed by the Secretary, in applying section 143 for purposes of subclauses (II), (IV), and (V) of subparagraph (A)(iii)—

(i) each qualified mortgage certificate credit program shall be treated as a separate issue,

(ii) the product determined by multiplying—

(I) the certified indebtedness amount of each mortgage credit certificate issued under such program, by

(II) the certificate credit rate specified in such certificate,

shall be treated as proceeds of such issue and the sum of such products shall be treated as the total proceeds of such issue, and

(iii) paragraph (1) of section 143(d) shall be applied by substituting “100 percent” for “95 percent or more”.

Clause (iii) shall not apply if the issuing authority submits a plan to the Secretary for administering the 95-percent requirement of section 143(d)(1) and the Secretary is satisfied that such requirement will be met under such plan.

(d) Determination of certificate credit rate

For purposes of this section—

(1) In general

The certificate credit rate specified in any mortgage credit certificate shall not be less than 10 percent or more than 50 percent.

(2) Aggregate limit on certificate credit rates**(A) In general**

In the case of each qualified mortgage credit certificate program, the sum of the products determined by multiplying—

- (i) the certified indebtedness amount of each mortgage credit certificate issued under such program, by
- (ii) the certificate credit rate with respect to such certificate,

shall not exceed 25 percent of the nonissued bond amount.

(B) Nonissued bond amount

For purposes of subparagraph (A), the term “nonissued bond amount” means, with respect to any qualified mortgage credit certificate program, the amount of qualified mortgage bonds which the issuing authority is otherwise authorized to issue and elects not to issue under subsection (c)(2)(A)(ii).

(e) Special rules and definitions

For purposes of this section—

(1) Carryforward of unused credit**(A) In general**

If the credit allowable under subsection (a) for any taxable year exceeds the applicable tax limit for such taxable year, such excess shall be a carryover to each of the 3 succeeding taxable years and, subject to the limitations of subparagraph (B), shall be added to the credit allowable by subsection (a) for such succeeding taxable year.

(B) Limitation

The amount of the unused credit which may be taken into account under subparagraph (A) for any taxable year shall not exceed the amount (if any) by which the applicable tax limit for such taxable year exceeds the sum of—

- (i) the credit allowable under subsection (a) for such taxable year determined without regard to this paragraph, and
- (ii) the amounts which, by reason of this paragraph, are carried to such taxable year and are attributable to taxable years before the unused credit year.

(C) Applicable tax limit

For purposes of this paragraph, the term “applicable tax limit” means—

- (i) in the case of a taxable year to which section 26(a)(2) applies, the limitation imposed by section 26(a)(2) for the taxable year reduced by the sum of the credits allowable under this subpart (other than this section and sections 23, 25D, and 1400C), and
- (ii) in the case of a taxable year to which section 26(a)(2) does not apply, the limitation imposed by section 26(a)(1) for the taxable year reduced by the sum of the credits allowable under this subpart (other than this section and sections 23, 24, 25A(i), 25B, 25D, 30, 30B, 30D, and 1400C).

(2) Indebtedness not treated as certified where certain requirements not in fact met

Subsection (a) shall not apply to any indebtedness if all the requirements of subsection

(c)(1), (d), (e), (f), and (i) of section 143 and clauses (iv), (v), and (vii) of subsection (c)(2)(A), were not in fact met with respect to such indebtedness. Except to the extent provided in regulations, the requirements described in the preceding sentence shall be treated as met if there is a certification, under penalty of perjury, that such requirements are met.

(3) Period for which certificate in effect**(A) In general**

Except as provided in subparagraph (B), a mortgage credit certificate shall be treated as in effect with respect to interest attributable to the period—

- (i) beginning on the date such certificate is issued, and
- (ii) ending on the earlier of the date on which—
 - (I) the certificate is revoked by the issuing authority, or
 - (II) the residence to which such certificate relates ceases to be the principal residence of the individual to whom the certificate relates.

(B) Certificate invalid unless indebtedness incurred within certain period

A certificate shall not apply to any indebtedness which is incurred after the close of the second calendar year following the calendar year for which the issuing authority made the applicable election under subsection (c)(2)(A)(ii).

(C) Notice to Secretary when certificate revoked

Any issuing authority which revokes any mortgage credit certificate shall notify the Secretary of such revocation at such time and in such manner as the Secretary shall prescribe by regulations.

(4) Reissuance of mortgage credit certificates

The Secretary may prescribe regulations which allow the administrator of a mortgage credit certificate program to reissue a mortgage credit certificate specifying a certified mortgage indebtedness that replaces the outstanding balance of the certified mortgage indebtedness specified on the original certificate to any taxpayer to whom the original certificate was issued, under such terms and conditions as the Secretary determines are necessary to ensure that the amount of the credit allowable under subsection (a) with respect to such reissued certificate is equal to or less than the amount of credit which would be allowable under subsection (a) with respect to the original certificate for any taxable year ending after such reissuance.

(5) Public notice that certificates will be issued

At least 90 days before any mortgage credit certificate is to be issued after a qualified mortgage credit certificate program, the issuing authority shall provide reasonable public notice of—

- (A) the eligibility requirements for such certificate,
- (B) the methods by which such certificates are to be issued, and

(C) such other information as the Secretary may require.

(6) Interest paid or accrued to related persons

No credit shall be allowed under subsection (a) for any interest paid or accrued to a person who is a related person to the taxpayer (within the meaning of section 144(a)(3)(A)).

(7) Principal residence

The term “principal residence” has the same meaning as when used in section 121.

(8) Qualified rehabilitation and home improvement

(A) Qualified rehabilitation

The term “qualified rehabilitation” has the meaning given such term by section 143(k)(5)(B).

(B) Qualified home improvement

The term “qualified home improvement” means an alteration, repair, or improvement described in section 143(k)(4).

(9) Qualified mortgage bond

The term “qualified mortgage bond” has the meaning given such term by section 143(a)(1).

(10) Manufactured housing

For purposes of this section, the term “single family residence” includes any manufactured home which has a minimum of 400 square feet of living space and a minimum width in excess of 102 inches and which is of a kind customarily used at a fixed location. Nothing in the preceding sentence shall be construed as providing that such a home will be taken into account in making determinations under section 143.

(f) Reduction in aggregate amount of qualified mortgage bonds which may be issued where certain requirements not met

(1) In general

If for any calendar year any mortgage credit certificate program which satisfies procedural requirements with respect to volume limitations prescribed by the Secretary fails to meet the requirements of paragraph (2) of subsection (d), such requirements shall be treated as satisfied with respect to any certified indebtedness of such program, but the applicable State ceiling under subsection (d) of section 146 for the State in which such program operates shall be reduced by 1.25 times the correction amount with respect to such failure. Such reduction shall be applied to such State ceiling for the calendar year following the calendar year in which the Secretary determines the correction amount with respect to such failure.

(2) Correction amount

(A) In general

For purposes of paragraph (1), the term “correction amount” means an amount equal to the excess credit amount divided by 0.25.

(B) Excess credit amount

(i) In general

For purposes of subparagraph (A)(i), the term “excess credit amount” means the excess of—

(I) the credit amount for any mortgage credit certificate program, over

(II) the amount which would have been the credit amount for such program had such program met the requirements of paragraph (2) of subsection (d).

(ii) Credit amount

For purposes of clause (i), the term “credit amount” means the sum of the products determined under clauses (i) and (ii) of subsection (d)(2)(A).

(3) Special rule for States having constitutional home rule cities

In the case of a State having one or more constitutional home rule cities (within the meaning of section 146(d)(3)(C)), the reduction in the State ceiling by reason of paragraph (1) shall be allocated to the constitutional home rule city, or to the portion of the State not within such city, whichever caused the reduction.

(4) Exception where certification program

The provisions of this subsection shall not apply in any case in which there is a certification program which is designed to ensure that the requirements of this section are met and which meets such requirements as the Secretary may by regulations prescribe.

(5) Waiver

The Secretary may waive the application of paragraph (1) in any case in which he determines that the failure is due to reasonable cause.

(g) Reporting requirements

Each person who makes a loan which is a certified indebtedness amount under any mortgage credit certificate shall file a report with the Secretary containing—

(1) the name, address, and social security account number of the individual to which the certificate was issued,

(2) the certificate’s issuer, date of issue, certified indebtedness amount, and certificate credit rate, and

(3) such other information as the Secretary may require by regulations.

Each person who issues a mortgage credit certificate shall file a report showing such information as the Secretary shall by regulations prescribe. Any such report shall be filed at such time and in such manner as the Secretary may require by regulations.

(h) Regulations; contracts

(1) Regulations

The Secretary shall prescribe such regulations as may be necessary to carry out the purposes of this section, including regulations which may require recipients of mortgage credit certificates to pay a reasonable processing fee to defray the expenses incurred in administering the program.

(2) Contracts

The Secretary is authorized to enter into contracts with any person to provide services in connection with the administration of this section.

(i) Recapture of portion of Federal subsidy from use of mortgage credit certificates

For provisions increasing the tax imposed by this chapter to recapture a portion of the Federal subsidy from the use of mortgage credit certificates, see section 143(m).

(Added Pub. L. 98-369, div. A, title VI, §612(a), July 18, 1984, 98 Stat. 905; amended Pub. L. 99-514, title XIII, §1301(f), title XVIII, §§1862(a)-(d)(1), 1899A(1), Oct. 22, 1986, 100 Stat. 2655, 2883, 2884, 2958; Pub. L. 100-647, title I, §1013(a)(25), (26), title IV, §4005(a)(2), (g)(7), Nov. 10, 1988, 102 Stat. 3543, 3645, 3651; Pub. L. 101-239, title VII, §7104(b), Dec. 19, 1989, 103 Stat. 2305; Pub. L. 101-508, title XI, §11408(b), Nov. 5, 1990, 104 Stat. 1388-477; Pub. L. 102-227, title I, §108(b), Dec. 11, 1991, 105 Stat. 1688; Pub. L. 103-66, title XIII, §13141(b), Aug. 10, 1993, 107 Stat. 436; Pub. L. 104-188, title I, §1807(c)(1), Aug. 20, 1996, 110 Stat. 1902; Pub. L. 105-34, title III, §312(d)(1), Aug. 5, 1997, 111 Stat. 839; Pub. L. 105-206, title VI, §6008(d)(7), July 22, 1998, 112 Stat. 812; Pub. L. 107-16, title II, §201(b)(2)(F), title VI, §618(b)(2)(B), June 7, 2001, 115 Stat. 46, 108; Pub. L. 109-58, title XIII, §1335(b)(2), Aug. 8, 2005, 119 Stat. 1036; Pub. L. 109-135, title IV, §402(i)(3)(C), (4), Dec. 21, 2005, 119 Stat. 2613, 2615; Pub. L. 110-343, div. B, title II, §205(d)(1)(B), Oct. 3, 2008, 122 Stat. 3838; Pub. L. 111-5, div. B, title I, §§1004(b)(2), 1142(b)(1)(B), 1144(b)(1)(B), Feb. 17, 2009, 123 Stat. 314, 330, 332.)

AMENDMENT OF SECTION

For termination of amendment by section 402(i)(3)(H) of Pub. L. 109-135, see Effective and Termination Dates of 2005 Amendments note below.

For termination of amendment by section 901 of Pub. L. 107-16, see Effective and Termination Dates of 2001 Amendment note below.

PRIOR PROVISIONS

A prior section 25 was renumbered section 26 of this title.

AMENDMENTS

2009—Subsec. (e)(1)(C)(ii). Pub. L. 111-5, §1144(b)(1)(B), inserted “30B,” after “30.”

Pub. L. 111-5, §1142(b)(1)(B), inserted “30,” after “25D.”

Pub. L. 111-5, §1004(b)(2), inserted “25A(i),” after “24.”

2008—Subsec. (e)(1)(C)(ii). Pub. L. 110-343 inserted “30D,” after “25D.”

2005—Subsec. (e)(1)(C). Pub. L. 109-135, §402(i)(3)(C), (H), temporarily reenacted heading without change and amended text generally. Prior to amendment, text read as follows: “For purposes of this paragraph, the term ‘applicable tax limit’ means the limitation imposed by section 26(a) for the taxable year reduced by the sum of the credits allowable under this subpart (other than this section and sections 23, 24, 25B, and 1400C).” See Effective and Termination Dates of 2005 Amendments notes below.

Pub. L. 109-58, §1335(b)(2), which directed amendment of subpar. (C) by substituting “other than this section, section 23, section 25D, and section 1400C” for “this section and sections 23 and 1400C”, was repealed by Pub. L. 109-135, §402(i)(4). See Effective and Termination Dates of 2005 Amendments notes below.

2001—Subsec. (e)(1)(C). Pub. L. 107-16, §618(b)(2)(B), inserted “25B,” after “24.”

Pub. L. 107-16, §§201(b)(2)(F), 901, temporarily inserted “, 24,” after “sections 23”. See Effective and Termination Dates of 2001 Amendment note below.

1998—Subsec. (e)(1)(C). Pub. L. 105-206 substituted “sections 23 and 1400C” for “section 23”.

1997—Subsec. (e)(7). Pub. L. 105-34 substituted “section 121” for “section 1034”.

1996—Subsec. (e)(1)(C). Pub. L. 104-188 inserted “and section 23” after “other than this section”.

1993—Subsecs. (h) to (j). Pub. L. 103-66 redesignated subsecs. (i) and (j) as (h) and (i), respectively, and struck out heading and text of former subsec. (h). Text read as follows: “No election may be made under subsection (c)(2)(A)(ii) for any period after June 30, 1992.”

1991—Subsec. (h). Pub. L. 102-227 substituted “June 30, 1992” for “December 31, 1991”.

1990—Subsec. (h). Pub. L. 101-508 substituted “December 31, 1991” for “September 30, 1990”.

1989—Subsec. (h). Pub. L. 101-239 substituted “for any period after September 30, 1990” for “for any calendar year after 1989”.

1988—Subsec. (c)(2)(A)(ii). Pub. L. 100-647, §1013(a)(25), amended Pub. L. 99-514, §1301(f)(2)(C)(ii), see 1986 Amendment note below.

Subsec. (h). Pub. L. 100-647, §4005(a)(2), substituted “1989” for “1988”.

Pub. L. 100-647, §1013(a)(26), substituted “1988” for “1987”.

Subsec. (j). Pub. L. 100-647, §4005(g)(7), added subsec. (j).

1986—Subsec. (a)(1)(B). Pub. L. 99-514, §1862(d)(1), substituted “paid or accrued” for “paid or incurred”.

Subsec. (b)(2)(A)(ii). Pub. L. 99-514, §1301(f)(2)(A), substituted “section 143(k)(4)” for “section 103A(l)(6)”.

Subsec. (b)(2)(A)(iii). Pub. L. 99-514, §1301(f)(2)(B), substituted “section 143(k)(5)” for “section 103A(l)(7)”.

Subsec. (c)(2)(A). Pub. L. 99-514, §1301(f)(2)(E), substituted “section 143(a)(2)” for “section 103A(c)(2)” in provision following cl. (vii).

Pub. L. 99-514, §1862(b), inserted “Under regulations, rules similar to the rules of subparagraphs (B) and (C) of section 103A(c)(2) shall apply to the requirements of this subparagraph.”

Subsec. (c)(2)(A)(ii). Pub. L. 99-514, §1301(f)(2)(C)(ii), as amended by Pub. L. 100-647, §1013(a)(25), substituted “private activity bonds which it may otherwise issue during such calendar year under section 146” for “qualified mortgage bonds which it may otherwise issue during such calendar year under section 103A”.

Subsec. (c)(2)(A)(iii). Pub. L. 99-514, §1301(f)(2)(C)(i), substituted “section 143” for “section 103A” in introductory provisions, added subcls. (I) to (VI), and struck out former subcls. (I) to (V) which read as follows:

“(I) subsection (d) (relating to residence requirements),

“(II) subsection (e) (relating to 3-year requirement),

“(III) subsection (f) (relating to purchase price requirement),

“(IV) subsection (h) (relating to portion of loans required to be placed in targeted areas), and

“(V) subsection (j), other than paragraph (2) thereof (relating to other requirements).”

Subsec. (c)(2)(A)(iii)(V). Pub. L. 99-514, §1862(a), substituted “subsection (j), other than paragraph (2) thereof” for “paragraph (1) of subsection (j)”.

Subsec. (c)(2)(B). Pub. L. 99-514, §1301(f)(2)(C)(i), substituted in heading and introductory provisions “section 143” for “section 103A”.

Pub. L. 99-514, §1301(f)(2)(F), inserted in introductory provisions reference to subcl. (V), added cl. (iii) and closing provisions, and struck out former cl. (iii) and closing provisions which read as follows:

“(iii) paragraph (1) of section 103A(e) shall be applied by substituting ‘100 percent’ for ‘90 percent or more’.

Clause (iii) shall not apply if the issuing authority submits a plan to the Secretary for administering the 90-percent requirement of section 103A(e)(1) and the Secretary is satisfied that such requirement will be met under such plan.”

Subsec. (d)(2)(A). Pub. L. 99-514, §1301(f)(1)(A), substituted “25 percent” for “20 percent” in concluding provisions.

Subsec. (d)(3). Pub. L. 99-514, §1301(f)(2)(G), struck out par. (3) "Additional limit in certain cases" which read as follows: "In the case of a qualified mortgage credit certificate program in a State which—

"(A) has a State ceiling (as defined in section 103A(g)(4)) for the year an election is made that exceeds 20 percent of the average annual aggregate principal amount of mortgages executed during the immediately preceding 3 calendar years for single family owner-occupied residences located within the jurisdiction of such State, or

"(B) issued qualified mortgage bonds in an aggregate amount less than \$150,000,000 for calendar year 1983,

the certificate credit rate for any mortgage credit certificate shall not exceed 20 percent unless the issuing authority submits a plan to the Secretary to ensure that the weighted average of the certificate credit rates in such mortgage credit certificate program does not exceed 20 percent and the Secretary approves such plan."

Subsec. (e)(1)(B). Pub. L. 99-514, §1862(c), amended subpar. (B) generally. Prior to amendment, subpar. (B) "Limitations" read as follows: "The amount of the unused credit which may be taken into account under subparagraph (A) for any taxable year shall not exceed the amount by which the applicable tax limit for such taxable year exceeds the sum of the amounts which, by reason of this paragraph, are carried to such taxable year and are attributable to taxable years before the unused credit year."

Subsec. (e)(2). Pub. L. 99-514, §1301(f)(2)(H), substituted "subsections (c)(1), (d), (e), (f), and (i) of section 143" for "subsection (d)(1), (e), (f), and (j) of section 103A".

Subsec. (e)(6). Pub. L. 99-514, §1301(f)(2)(I), substituted "section 144(a)(3)(A)" for "section 103(b)(6)(C)(i)".

Subsec. (e)(8)(A). Pub. L. 99-514, §1301(f)(2)(J), substituted "section 143(k)(5)(B)" for "section 103A(l)(7)(B)".

Subsec. (e)(8)(B). Pub. L. 99-514, §1301(f)(2)(K), substituted "section 143(k)(4)" for "section 103A(l)(6)".

Subsec. (e)(9). Pub. L. 99-514, §1301(f)(2)(L), substituted "section 143(a)(1)" for "section 103A(c)(1)".

Subsec. (e)(10). Pub. L. 99-514, §1301(f)(2)(M), substituted "section 143" for "section 103A".

Subsec. (f)(1). Pub. L. 99-514, §1301(f)(2)(N), substituted "subsection (d) of section 146" for "paragraph (4) of section 103A(g)".

Subsec. (f)(2)(A). Pub. L. 99-514, §1301(f)(1)(B), substituted "0.25" for "0.20".

Subsec. (f)(3). Pub. L. 99-514, §1301(f)(2)(O), substituted "section 146(d)(3)(C)" for "section 103A(g)(5)(C)".

Subsec. (f)(4). Pub. L. 99-514, §1899A(1), substituted "ensure" for "insure".

EFFECTIVE DATE OF 2009 AMENDMENT

Amendment by section 1004(b)(2) of Pub. L. 111-5 applicable to taxable years beginning after Dec. 31, 2008, see section 1004(d) of Pub. L. 111-5, set out as an Effective and Termination Dates of 2009 Amendment note under section 24 of this title.

Amendment by section 1142(b)(1)(B) of Pub. L. 111-5 applicable to vehicles acquired after Feb. 17, 2009, see section 1142(c) of Pub. L. 111-5, set out as an Effective and Termination Dates of 2009 Amendment note under section 24 of this title.

Amendment by section 1144(b)(1)(B) of Pub. L. 111-5 applicable to taxable years beginning after Dec. 31, 2008, see section 1144(c) of Pub. L. 111-5, set out as an Effective and Termination Dates of 2009 Amendment note under section 24 of this title.

EFFECTIVE DATE OF 2008 AMENDMENT

Amendment by Pub. L. 110-343 applicable to taxable years beginning after Dec. 31, 2008, see section 205(e) of Pub. L. 110-343, set out as an Effective and Termination Dates of 2008 Amendment note under section 24 of this title.

EFFECTIVE AND TERMINATION DATES OF 2005 AMENDMENTS

Amendment by section 402(i)(3)(C) of Pub. L. 109-135 subject to title IX of the Economic Growth and Tax Relief Reconciliation Act of 2001, Pub. L. 107-16, §901, in the same manner as the provisions of such Act to which such amendment relates, see section 402(i)(3)(H) of Pub. L. 109-135, set out as a note under section 23 of this title.

The Internal Revenue Code of 1986 to be applied and administered as if the amendments made by section 1335(b)(1)-(3) of Pub. L. 109-58 had never been enacted, see section 402(i)(4) of Pub. L. 109-135, set out as a note under section 23 of this title.

Amendments by Pub. L. 109-135 effective as if included in the provisions of the Energy Policy Act of 2005, Pub. L. 109-58, to which they relate, except that amendment by section 402(i)(3)(C) of Pub. L. 109-135 is applicable to taxable years beginning after Dec. 31, 2005, see section 402(m) of Pub. L. 109-135, set out as a note under section 23 of this title.

Amendment by Pub. L. 109-58 applicable to property placed in service after Dec. 31, 2005, in taxable years ending after such date, see section 1335(c) of Pub. L. 109-58, set out as a note under section 23 of this title.

EFFECTIVE AND TERMINATION DATES OF 2001 AMENDMENT

Amendment by Pub. L. 107-16 inapplicable to taxable years beginning during 2004 or 2005, see section 312(b)(2) of Pub. L. 108-311, set out as a note under section 23 of this title.

Amendment by Pub. L. 107-16 inapplicable to taxable years beginning during 2002 and 2003, see section 601(b)(2) of Pub. L. 107-147, set out as a note under section 23 of this title.

Amendment by section 201(b)(2)(F) of Pub. L. 107-16 applicable to taxable years beginning after Dec. 31, 2001, see section 201(e)(2) of Pub. L. 107-16, set out as a note under section 24 of this title.

Amendment by section 618(b)(2)(B) of Pub. L. 107-16 applicable to taxable years beginning after Dec. 31, 2001, see section 618(d) of Pub. L. 107-16, set out as a note under section 24 of this title.

Amendment by section 201(b)(2)(F) of Pub. L. 107-16 inapplicable to taxable, plan, or limitation years beginning after Dec. 31, 2010, and the Internal Revenue Code of 1986 to be applied and administered to such years as if such amendment had never been enacted, see section 901 of Pub. L. 107-16, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105-206 effective, except as otherwise provided, as if included in the provisions of the Taxpayer Relief Act of 1997, Pub. L. 105-34, to which such amendment relates, see section 6024 of Pub. L. 105-206, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105-34 applicable to sales and exchanges after May 6, 1997, with certain exceptions, see section 312(d) of Pub. L. 105-34, set out as a note under section 121 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104-188 applicable to taxable years beginning after Dec. 31, 1996, see section 1807(e) of Pub. L. 104-188, set out as an Effective Date note under section 23 of this title.

EFFECTIVE DATE OF 1993 AMENDMENT

Section 13141(f)(2) of Pub. L. 103-66 provided that: "The amendment made by subsection (b) [amending this section] shall apply to elections for periods after June 30, 1992."

EFFECTIVE DATE OF 1991 AMENDMENT

Section 108(c)(2) of Pub. L. 102-227 provided that: "The amendment made by subsection (b) [amending

this section] shall apply to elections for periods after December 31, 1991.”

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101-508 applicable to elections for periods after Sept. 30, 1990, see section 11408(d)(2) of Pub. L. 101-508, set out as a note under section 143 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by section 1013(a)(25), (26) of Pub. L. 100-647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99-514, to which such amendment relates, see section 1019(a) of Pub. L. 100-647, set out as a note under section 1 of this title.

Amendment by section 4005(a)(2) of Pub. L. 100-647 applicable to bonds issued, and nonissued bond amounts elected, after Dec. 31, 1988, see section 4005(h)(1) of Pub. L. 100-647, set out as a note under section 143 of this title.

Amendment by section 4005(g)(7) of Pub. L. 100-647 applicable to financing provided, and mortgage credit certificates issued, after Dec. 31, 1990, with certain exceptions, see section 4005(h)(3) of Pub. L. 100-647, set out as a note under section 143 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 1301(f)(1) of Pub. L. 99-514 applicable to nonissued bond amounts elected after Aug. 15, 1986, and amendment by section 1301(f)(2) of Pub. L. 99-514 applicable to certificates issued with respect to nonissued bond amounts elected after Aug. 15, 1986, see section 1311(b) of Pub. L. 99-514, as amended, set out as an Effective Date; Transitional Rules note under section 141 of this title.

Amendment by section 1862(a)-(d)(1) of Pub. L. 99-514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98-369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99-514, set out as a note under section 48 of this title.

EFFECTIVE DATE

Section 612(g) of Pub. L. 98-369, as amended by Pub. L. 99-514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that:

“(1) **IN GENERAL.**—Except as otherwise provided in this subsection, the amendments made by this section [enacting this section and section 6708 of this title, redesignating former section 25 as 26, and amending sections 23, 28 to 30, 38, 55, 103A, 163, 168, and 901 of this title] shall apply to interest paid or accrued after December 31, 1984, on indebtedness incurred after December 31, 1984.

“(2) **ELECTIONS.**—The amendments made by this section shall apply to elections under section 25(c)(2)(A)(ii) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (as added by this section) for calendar years after 1983.”

**PLAN AMENDMENTS NOT REQUIRED UNTIL
JANUARY 1, 1989**

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§ 1101-1147 and 1171-1177] or title XVIII [§§ 1800-1899A] of Pub. L. 99-514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99-514, as amended, set out as a note under section 401 of this title.

§ 25A. Hope and Lifetime Learning credits

(a) Allowance of credit

In the case of an individual, there shall be allowed as a credit against the tax imposed by this chapter for the taxable year the amount equal to the sum of—

- (1) the Hope Scholarship Credit, plus
- (2) the Lifetime Learning Credit.

(b) Hope Scholarship Credit

(1) Per student credit

In the case of any eligible student for whom an election is in effect under this section for any taxable year, the Hope Scholarship Credit is an amount equal to the sum of—

(A) 100 percent of so much of the qualified tuition and related expenses paid by the taxpayer during the taxable year (for education furnished to the eligible student during any academic period beginning in such taxable year) as does not exceed \$1,000, plus

(B) 50 percent of such expenses so paid as exceeds \$1,000 but does not exceed the applicable limit.

(2) Limitations applicable to Hope Scholarship Credit

(A) Credit allowed only for 2 taxable years

An election to have this section apply with respect to any eligible student for purposes of the Hope Scholarship Credit under subsection (a)(1) may not be made for any taxable year if such an election (by the taxpayer or any other individual) is in effect with respect to such student for any 2 prior taxable years.

(B) Credit allowed for year only if individual is at least ½ time student for portion of year

The Hope Scholarship Credit under subsection (a)(1) shall not be allowed for a taxable year with respect to the qualified tuition and related expenses of an individual unless such individual is an eligible student for at least one academic period which begins during such year.

(C) Credit allowed only for first 2 years of postsecondary education

The Hope Scholarship Credit under subsection (a)(1) shall not be allowed for a taxable year with respect to the qualified tuition and related expenses of an eligible student if the student has completed (before the beginning of such taxable year) the first 2 years of postsecondary education at an eligible educational institution.

(D) Denial of credit if student convicted of a felony drug offense

The Hope Scholarship Credit under subsection (a)(1) shall not be allowed for qualified tuition and related expenses for the enrollment or attendance of a student for any academic period if such student has been convicted of a Federal or State felony offense consisting of the possession or distribution of a controlled substance before the end of the taxable year with or within which such period ends.

(3) Eligible student

For purposes of this subsection, the term “eligible student” means, with respect to any academic period, a student who—

(A) meets the requirements of section 484(a)(1) of the Higher Education Act of 1965

(20 U.S.C. 1091(a)(1)), as in effect on the date of the enactment of this section, and

(B) is carrying at least ½ the normal full-time work load for the course of study the student is pursuing.

(4) Applicable limit

For purposes of paragraph (1)(B), the applicable limit for any taxable year is an amount equal to 2 times the dollar amount in effect under paragraph (1)(A) for such taxable year.

(c) Lifetime Learning Credit

(1) Per taxpayer credit

The Lifetime Learning Credit for any taxpayer for any taxable year is an amount equal to 20 percent of so much of the qualified tuition and related expenses paid by the taxpayer during the taxable year (for education furnished during any academic period beginning in such taxable year) as does not exceed \$10,000 (\$5,000 in the case of taxable years beginning before January 1, 2003).

(2) Special rules for determining expenses

(A) Coordination with Hope Scholarship

The qualified tuition and related expenses with respect to an individual who is an eligible student for whom a Hope Scholarship Credit under subsection (a)(1) is allowed for the taxable year shall not be taken into account under this subsection.

(B) Expenses eligible for Lifetime Learning Credit

For purposes of paragraph (1), qualified tuition and related expenses shall include expenses described in subsection (f)(1) with respect to any course of instruction at an eligible educational institution to acquire or improve job skills of the individual.

(d) Limitation based on modified adjusted gross income

(1) In general

The amount which would (but for this subsection) be taken into account under subsection (a) for the taxable year shall be reduced (but not below zero) by the amount determined under paragraph (2).

(2) Amount of reduction

The amount determined under this paragraph is the amount which bears the same ratio to the amount which would be so taken into account as—

(A) the excess of—

(i) the taxpayer's modified adjusted gross income for such taxable year, over

(ii) \$40,000 (\$80,000 in the case of a joint return), bears to

(B) \$10,000 (\$20,000 in the case of a joint return).

(3) Modified adjusted gross income

The term “modified adjusted gross income” means the adjusted gross income of the taxpayer for the taxable year increased by any amount excluded from gross income under section 911, 931, or 933.

(e) Election not to have section apply

A taxpayer may elect not to have this section apply with respect to the qualified tuition and

related expenses of an individual for any taxable year.

(f) Definitions

For purposes of this section—

(1) Qualified tuition and related expenses

(A) In general

The term “qualified tuition and related expenses” means tuition and fees required for the enrollment or attendance of—

(i) the taxpayer,

(ii) the taxpayer's spouse, or

(iii) any dependent of the taxpayer with respect to whom the taxpayer is allowed a deduction under section 151,

at an eligible educational institution for courses of instruction of such individual at such institution.

(B) Exception for education involving sports, etc.

Such term does not include expenses with respect to any course or other education involving sports, games, or hobbies, unless such course or other education is part of the individual's degree program.

(C) Exception for nonacademic fees

Such term does not include student activity fees, athletic fees, insurance expenses, or other expenses unrelated to an individual's academic course of instruction.

(2) Eligible educational institution

The term “eligible educational institution” means an institution—

(A) which is described in section 481 of the Higher Education Act of 1965 (20 U.S.C. 1088), as in effect on the date of the enactment of this section, and

(B) which is eligible to participate in a program under title IV of such Act.

(g) Special rules

(1) Identification requirement

No credit shall be allowed under subsection (a) to a taxpayer with respect to the qualified tuition and related expenses of an individual unless the taxpayer includes the name and taxpayer identification number of such individual on the return of tax for the taxable year.

(2) Adjustment for certain scholarships, etc.

The amount of qualified tuition and related expenses otherwise taken into account under subsection (a) with respect to an individual for an academic period shall be reduced (before the application of subsections (b), (c), and (d)) by the sum of any amounts paid for the benefit of such individual which are allocable to such period as—

(A) a qualified scholarship which is excludable from gross income under section 117,

(B) an educational assistance allowance under chapter 30, 31, 32, 34, or 35 of title 38, United States Code, or under chapter 1606 of title 10, United States Code, and

(C) a payment (other than a gift, bequest, devise, or inheritance within the meaning of section 102(a)) for such individual's edu-

ditional expenses, or attributable to such individual's enrollment at an eligible educational institution, which is excludable from gross income under any law of the United States.

(3) Treatment of expenses paid by dependent

If a deduction under section 151 with respect to an individual is allowed to another taxpayer for a taxable year beginning in the calendar year in which such individual's taxable year begins—

(A) no credit shall be allowed under subsection (a) to such individual for such individual's taxable year, and

(B) qualified tuition and related expenses paid by such individual during such individual's taxable year shall be treated for purposes of this section as paid by such other taxpayer.

(4) Treatment of certain prepayments

If qualified tuition and related expenses are paid by the taxpayer during a taxable year for an academic period which begins during the first 3 months following such taxable year, such academic period shall be treated for purposes of this section as beginning during such taxable year.

(5) Denial of double benefit

No credit shall be allowed under this section for any expense for which a deduction is allowed under any other provision of this chapter.

(6) No credit for married individuals filing separate returns

If the taxpayer is a married individual (within the meaning of section 7703), this section shall apply only if the taxpayer and the taxpayer's spouse file a joint return for the taxable year.

(7) Nonresident aliens

If the taxpayer is a nonresident alien individual for any portion of the taxable year, this section shall apply only if such individual is treated as a resident alien of the United States for purposes of this chapter by reason of an election under subsection (g) or (h) of section 6013.

(h) Inflation adjustments

(1) Dollar limitation on amount of credit

(A) In general

In the case of a taxable year beginning after 2001, each of the \$1,000 amounts under subsection (b)(1) shall be increased by an amount equal to—

- (i) such dollar amount, multiplied by
- (ii) the cost-of-living adjustment determined under section 1(f)(3) for the calendar year in which the taxable year begins, determined by substituting "calendar year 2000" for "calendar year 1992" in subparagraph (B) thereof.

(B) Rounding

If any amount as adjusted under subparagraph (A) is not a multiple of \$100, such amount shall be rounded to the next lowest multiple of \$100.

(2) Income limits

(A) In general

In the case of a taxable year beginning after 2001, the \$40,000 and \$80,000 amounts in subsection (d)(2) shall each be increased by an amount equal to—

- (i) such dollar amount, multiplied by
- (ii) the cost-of-living adjustment determined under section 1(f)(3) for the calendar year in which the taxable year begins, determined by substituting "calendar year 2000" for "calendar year 1992" in subparagraph (B) thereof.

(B) Rounding

If any amount as adjusted under subparagraph (A) is not a multiple of \$1,000, such amount shall be rounded to the next lowest multiple of \$1,000.

(i) American opportunity tax credit

In the case of any taxable year beginning in 2009 or 2010—

(1) Increase in credit

The Hope Scholarship Credit shall be an amount equal to the sum of—

- (A) 100 percent of so much of the qualified tuition and related expenses paid by the taxpayer during the taxable year (for education furnished to the eligible student during any academic period beginning in such taxable year) as does not exceed \$2,000, plus
- (B) 25 percent of such expenses so paid as exceeds \$2,000 but does not exceed \$4,000.

(2) Credit allowed for first 4 years of post-secondary education

Subparagraphs (A) and (C) of subsection (b)(2) shall be applied by substituting "4" for "2".

(3) Qualified tuition and related expenses to include required course materials

Subsection (f)(1)(A) shall be applied by substituting "tuition, fees, and course materials" for "tuition and fees".

(4) Increase in AGI limits for Hope Scholarship Credit

In lieu of applying subsection (d) with respect to the Hope Scholarship Credit, such credit (determined without regard to this paragraph) shall be reduced (but not below zero) by the amount which bears the same ratio to such credit (as so determined) as—

- (A) the excess of—
 - (i) the taxpayer's modified adjusted gross income (as defined in subsection (d)(3)) for such taxable year, over
 - (ii) \$80,000 (\$160,000 in the case of a joint return), bears to
- (B) \$10,000 (\$20,000 in the case of a joint return).

(5) Credit allowed against alternative minimum tax

In the case of a taxable year to which section 26(a)(2) does not apply, so much of the credit allowed under subsection (a) as is attributable to the Hope Scholarship Credit shall not exceed the excess of—

(A) the sum of the regular tax liability (as defined in section 26(b)) plus the tax imposed by section 55, over

(B) the sum of the credits allowable under this subpart (other than this subsection and sections 23, 25D, and 30D) and section 27 for the taxable year.

Any reference in this section or section 24, 25, 26, 25B, 904, or 1400C to a credit allowable under this subsection shall be treated as a reference to so much of the credit allowable under subsection (a) as is attributable to the Hope Scholarship Credit.

(6) Portion of credit made refundable

40 percent of so much of the credit allowed under subsection (a) as is attributable to the Hope Scholarship Credit (determined after application of paragraph (4) and without regard to this paragraph and section 26(a)(2) or paragraph (5), as the case may be) shall be treated as a credit allowable under subpart C (and not allowed under subsection (a)). The preceding sentence shall not apply to any taxpayer for any taxable year if such taxpayer is a child to whom subsection (g) of section 1 applies for such taxable year.

(7) Coordination with midwestern disaster area benefits

In the case of a taxpayer with respect to whom section 702(a)(1)(B) of the Heartland Disaster Tax Relief Act of 2008 applies for any taxable year, such taxpayer may elect to waive the application of this subsection to such taxpayer for such taxable year.

(j) Regulations

The Secretary may prescribe such regulations as may be necessary or appropriate to carry out this section, including regulations providing for a recapture of the credit allowed under this section in cases where there is a refund in a subsequent taxable year of any amount which was taken into account in determining the amount of such credit.

(Added Pub. L. 105-34, title II, §201(a), Aug. 5, 1997, 111 Stat. 799; amended Pub. L. 107-16, title IV, §401(g)(2)(A), June 7, 2001, 115 Stat. 59; Pub. L. 111-5, div. B, title I, §1004(a), Feb. 17, 2009, 123 Stat. 313.)

INFLATION ADJUSTED ITEMS FOR CERTAIN YEARS

For inflation adjustment of certain items in this section, see Revenue Procedures listed in a table under section 1 of this title.

AMENDMENT OF SECTION

For termination of amendment by section 901 of Pub. L. 107-16, see Effective and Termination Dates of 2001 Amendment note below.

REFERENCES IN TEXT

The date of the enactment of this section, referred to in subsecs. (b)(3)(A) and (f)(2)(A), is the date of enactment of Pub. L. 105-34 which was approved Aug. 5, 1997.

The Higher Education Act of 1965, referred to in subsec. (f)(2)(B), is Pub. L. 89-329, Nov. 8, 1965, 79 Stat. 1219, as amended. Title IV of the Act is classified generally to subchapter IV (§1070 et seq.) of chapter 28 of Title 20, Education, and part C (§2751 et seq.) of subchapter I of chapter 34 of Title 42, The Public Health and Welfare.

For complete classification of this Act to the Code, see Short Title note set out under section 1001 of Title 20 and Tables.

Section 702(a)(1)(B) of the Heartland Disaster Tax Relief Act of 2008, referred to in subsec. (i)(7), is section 702(a)(1)(B) of Pub. L. 110-343, div. C, title VII, Oct. 3, 2008, 122 Stat. 3912, which is not classified to the Code.

AMENDMENTS

2009—Subsecs. (i), (j). Pub. L. 111-5 added subsec. (i) and redesignated former subsec. (i) as (j).

2001—Subsec. (e). Pub. L. 107-16, §§401(g)(2)(A), 901, temporarily amended heading and text of subsec. (e) generally. Prior to amendment, text read as follows:

“(1) IN GENERAL.—No credit shall be allowed under subsection (a) for a taxable year with respect to the qualified tuition and related expenses of an individual unless the taxpayer elects to have this section apply with respect to such individual for such year.

“(2) COORDINATION WITH EXCLUSIONS.—An election under this subsection shall not take effect with respect to an individual for any taxable year if any portion of any distribution during such taxable year from an education individual retirement account is excluded from gross income under section 530(d)(2).”

See Effective and Termination Dates of 2001 Amendment note below.

EFFECTIVE DATE OF 2009 AMENDMENT

Amendment by Pub. L. 111-5 applicable to taxable years beginning after Dec. 31, 2008, see section 1004(d) of Pub. L. 111-5, set out as an Effective and Termination Dates of 2009 Amendment note under section 24 of this title.

EFFECTIVE AND TERMINATION DATES OF 2001 AMENDMENT

Pub. L. 107-16, title IV, §401(h), June 7, 2001, 115 Stat. 60, provided that: “The amendments made by this section [amending this section and sections 135, 530, and 4973 of this title] shall apply to taxable years beginning after December 31, 2001.”

Amendment by Pub. L. 107-16 inapplicable to taxable, plan, or limitation years beginning after Dec. 31, 2010, and the Internal Revenue Code of 1986 to be applied and administered to such years as if such amendment had never been enacted, see section 901 of Pub. L. 107-16, set out as a note under section 1 of this title.

EFFECTIVE DATE

Section 201(f) of Pub. L. 105-34 provided that:

“(1) IN GENERAL.—The amendments made by this section [enacting this section and section 6050S of this title and amending sections 135, 6213, and 6724 of this title] shall apply to expenses paid after December 31, 1997 (in taxable years ending after such date), for education furnished in academic periods beginning after such date.

“(2) LIFETIME LEARNING CREDIT.—Section 25A(a)(2) of the Internal Revenue Code of 1986 shall apply to expenses paid after June 30, 1998 (in taxable years ending after such date), for education furnished in academic periods beginning after such dates.”

TREATMENT OF POSSESSIONS

Pub. L. 111-5, div. B, title I, §1004(c), Feb. 17, 2009, 123 Stat. 314, provided that:

“(1) PAYMENTS TO POSSESSIONS.—

“(A) MIRROR CODE POSSESSION.—The Secretary of the Treasury shall pay to each possession of the United States with a mirror code tax system amounts equal to the loss to that possession by reason of the application of section 25A(i)(6) of the Internal Revenue Code of 1986 (as added by this section) with respect to taxable years beginning in 2009 and 2010. Such amounts shall be determined by the Secretary of the Treasury based on information provided by the government of the respective possession.

“(B) OTHER POSSESSIONS.—The Secretary of the Treasury shall pay to each possession of the United States which does not have a mirror code tax system amounts estimated by the Secretary of the Treasury as being equal to the aggregate benefits that would have been provided to residents of such possession by reason of the application of section 25A(i)(6) of such Code (as so added) for taxable years beginning in 2009 and 2010 if a mirror code tax system had been in effect in such possession. The preceding sentence shall not apply with respect to any possession of the United States unless such possession has a plan, which has been approved by the Secretary of the Treasury, under which such possession will promptly distribute such payments to the residents of such possession.

“(2) COORDINATION WITH CREDIT ALLOWED AGAINST UNITED STATES INCOME TAXES.—Section 25A(i)(6) of such Code (as added by this section) shall not apply to a bona fide resident of any possession of the United States.

“(3) DEFINITIONS AND SPECIAL RULES.—

“(A) POSSESSION OF THE UNITED STATES.—For purposes of this subsection, the term ‘possession of the United States’ includes the Commonwealth of Puerto Rico and the Commonwealth of the Northern Mariana Islands.

“(B) MIRROR CODE TAX SYSTEM.—For purposes of this subsection, the term ‘mirror code tax system’ means, with respect to any possession of the United States, the income tax system of such possession if the income tax liability of the residents of such possession under such system is determined by reference to the income tax laws of the United States as if such possession were the United States.

“(C) TREATMENT OF PAYMENTS.—For purposes of section 1324(b)(2) of title 31, United States Code, the payments under this subsection shall be treated in the same manner as a refund due from the credit allowed under section 25A of the Internal Revenue Code of 1986 by reason of subsection (i)(6) of such section (as added by this section).”

§ 25B. Elective deferrals and IRA contributions by certain individuals

(a) Allowance of credit

In the case of an eligible individual, there shall be allowed as a credit against the tax imposed by this subtitle for the taxable year an amount equal to the applicable percentage of so much of the qualified retirement savings contributions of the eligible individual for the taxable year as do not exceed \$2,000.

(b) Applicable percentage

For purposes of this section—

(1) Joint returns

In the case of a joint return, the applicable percentage is—

(A) if the adjusted gross income of the taxpayer is not over \$30,000, 50 percent,

(B) if the adjusted gross income of the taxpayer is over \$30,000 but not over \$32,500, 20 percent,

(C) if the adjusted gross income of the taxpayer is over \$32,500 but not over \$50,000, 10 percent, and

(D) if the adjusted gross income of the taxpayer is over \$50,000, zero percent.

(2) Other returns

In the case of—

(A) a head of household, the applicable percentage shall be determined under paragraph (1) except that such paragraph shall be ap-

plied by substituting for each dollar amount therein (as adjusted under paragraph (3)) a dollar amount equal to 75 percent of such dollar amount, and

(B) any taxpayer not described in paragraph (1) or subparagraph (A), the applicable percentage shall be determined under paragraph (1) except that such paragraph shall be applied by substituting for each dollar amount therein (as adjusted under paragraph (3)) a dollar amount equal to 50 percent of such dollar amount.

(3) Inflation adjustment

In the case of any taxable year beginning in a calendar year after 2006, each of the dollar amounts in paragraph (1) shall be increased by an amount equal to—

(A) such dollar amount, multiplied by

(B) the cost-of-living adjustment determined under section 1(f)(3) for the calendar year in which the taxable year begins, determined by substituting “calendar year 2005” for “calendar year 1992” in subparagraph (B) thereof.

Any increase determined under the preceding sentence shall be rounded to the nearest multiple of \$500.

(c) Eligible individual

For purposes of this section—

(1) In general

The term “eligible individual” means any individual if such individual has attained the age of 18 as of the close of the taxable year.

(2) Dependents and full-time students not eligible

The term “eligible individual” shall not include—

(A) any individual with respect to whom a deduction under section 151 is allowed to another taxpayer for a taxable year beginning in the calendar year in which such individual’s taxable year begins, and

(B) any individual who is a student (as defined in section 152(f)(2)).

(d) Qualified retirement savings contributions

For purposes of this section—

(1) In general

The term “qualified retirement savings contributions” means, with respect to any taxable year, the sum of—

(A) the amount of the qualified retirement contributions (as defined in section 219(e)) made by the eligible individual,

(B) the amount of—

(i) any elective deferrals (as defined in section 402(g)(3)) of such individual, and

(ii) any elective deferral of compensation by such individual under an eligible deferred compensation plan (as defined in section 457(b)) of an eligible employer described in section 457(e)(1)(A), and

(C) the amount of voluntary employee contributions by such individual to any qualified retirement plan (as defined in section 4974(c)).

(2) Reduction for certain distributions**(A) In general**

The qualified retirement savings contributions determined under paragraph (1) shall be reduced (but not below zero) by the aggregate distributions received by the individual during the testing period from any entity of a type to which contributions under paragraph (1) may be made. The preceding sentence shall not apply to the portion of any distribution which is not includible in gross income by reason of a trustee-to-trustee transfer or a rollover distribution.

(B) Testing period

For purposes of subparagraph (A), the testing period, with respect to a taxable year, is the period which includes—

- (i) such taxable year,
- (ii) the 2 preceding taxable years, and
- (iii) the period after such taxable year and before the due date (including extensions) for filing the return of tax for such taxable year.

(C) Excepted distributions

There shall not be taken into account under subparagraph (A)—

- (i) any distribution referred to in section 72(p), 401(k)(8), 401(m)(6), 402(g)(2), 404(k), or 408(d)(4), and
- (ii) any distribution to which section 408A(d)(3) applies.

(D) Treatment of distributions received by spouse of individual

For purposes of determining distributions received by an individual under subparagraph (A) for any taxable year, any distribution received by the spouse of such individual shall be treated as received by such individual if such individual and spouse file a joint return for such taxable year and for the taxable year during which the spouse receives the distribution.

(e) Adjusted gross income

For purposes of this section, adjusted gross income shall be determined without regard to sections 911, 931, and 933.

(f) Investment in the contract

Notwithstanding any other provision of law, a qualified retirement savings contribution shall not fail to be included in determining the investment in the contract for purposes of section 72 by reason of the credit under this section.

(g) Limitation based on amount of tax

In the case of a taxable year to which section 26(a)(2) does not apply, the credit allowed under subsection (a) for the taxable year shall not exceed the excess of—

- (1) the sum of the regular tax liability (as defined in section 26(b)) plus the tax imposed by section 55, over
- (2) the sum of the credits allowable under this subpart (other than this section and sections 23, 25A(i), 25D, 30, 30B, and 30D) and section 27 for the taxable year.

(Added and amended Pub. L. 107-16, title VI, § 618(a), (b)(1), June 7, 2001, 115 Stat. 106, 108; Pub.

L. 107-147, title IV, §§ 411(m), 417(1), Mar. 9, 2002, 116 Stat. 48, 56; Pub. L. 108-311, title II, § 207(4), Oct. 4, 2004, 118 Stat. 1177; Pub. L. 109-135, title IV, § 402(i)(3)(D), Dec. 21, 2005, 119 Stat. 2614; Pub. L. 109-280, title VIII, §§ 812, 833(a), Aug. 17, 2006, 120 Stat. 997, 1003; Pub. L. 110-343, div. B, title I, § 106(e)(2)(C), title II, § 205(d)(1)(C), Oct. 3, 2008, 122 Stat. 3817, 3838; Pub. L. 111-5, div. B, title I, §§ 1004(b)(4), 1142(b)(1)(C), 1144(b)(1)(C), Feb. 17, 2009, 123 Stat. 314, 330, 332.)

INFLATION ADJUSTED ITEMS FOR CERTAIN YEARS

For inflation adjustment of certain items in this section, see Revenue Procedures listed in a table under section 1 of this title and Revenue Notices listed in a table under section 401 of this title.

AMENDMENT OF SECTION

For termination of amendment by section 402(i)(3)(H) of Pub. L. 109-135, see Effective and Termination Dates of 2005 Amendment note below.

AMENDMENTS

2009—Subsec. (g)(2). Pub. L. 111-5, § 1144(b)(1)(C), inserted “30B,” after “30.”

Pub. L. 111-5, § 1142(b)(1)(C), inserted “30,” after “25D.”

Pub. L. 111-5, § 1004(b)(4), inserted “25A(i),” after “23.”

2008—Subsec. (g)(2). Pub. L. 110-343, § 205(d)(1)(C), substituted “, 25D, and 30D” for “and 25D”.

Pub. L. 110-343, § 106(e)(2)(C), substituted “sections 23 and 25D” for “section 23”.

2006—Subsec. (b). Pub. L. 109-280, § 833(a), reenacted heading without change and amended text of subsec. (b) generally, substituting provisions consisting of introductory provisions and pars. (1) to (3) for former provisions consisting of introductory provisions and a table of applicable percentages for amounts of adjusted gross income for a joint return, a head of household, and all other cases.

Subsec. (h). Pub. L. 109-280, § 812, struck out heading and text of subsec. (h). Text read as follows: “This section shall not apply to taxable years beginning after December 31, 2006.”

2005—Subsec. (g). Pub. L. 109-135, § 402(i)(3)(D), (H), temporarily substituted “In the case of a taxable year to which section 26(a)(2) does not apply, the credit” for “The credit” in introductory provisions. See Effective and Termination Dates of 2005 Amendment note below.

2004—Subsec. (c)(2)(B). Pub. L. 108-311 substituted “152(f)(2)” for “151(c)(4)”.

2002—Subsec. (d)(2)(A). Pub. L. 107-147, § 411(m), reenacted heading without change and amended text of subpar. (A) generally. Prior to amendment, text read as follows: “The qualified retirement savings contributions determined under paragraph (1) shall be reduced (but not below zero) by the sum of—

- “(i) any distribution from a qualified retirement plan (as defined in section 4974(c)), or from an eligible deferred compensation plan (as defined in section 457(b)), received by the individual during the testing period which is includible in gross income, and
- “(ii) any distribution from a Roth IRA or a Roth account received by the individual during the testing period which is not a qualified rollover contribution (as defined in section 408A(e)) to a Roth IRA or a rollover under section 402(c)(8)(B) to a Roth account.”

Subsecs. (g), (h). Pub. L. 107-147, § 417(1), redesignated subsec. (g), relating to termination, as (h).

2001—Subsec. (g). Pub. L. 107-16, § 618(b)(1), added subsec. (g) relating to limitation based on amount of tax.

EFFECTIVE DATE OF 2009 AMENDMENT

Amendment by section 1004(b)(4) of Pub. L. 111-5 applicable to taxable years beginning after Dec. 31, 2008,

see section 1004(d) of Pub. L. 111-5, set out as an Effective and Termination Dates of 2009 Amendment note under section 24 of this title.

Amendment by section 1142(b)(1)(C) of Pub. L. 111-5 applicable to vehicles acquired after Feb. 17, 2009, see section 1142(c) of Pub. L. 111-5, set out as an Effective and Termination Dates of 2009 Amendment note under section 24 of this title.

Amendment by section 1144(b)(1)(C) of Pub. L. 111-5 applicable to taxable years beginning after Dec. 31, 2008, see section 1144(c) of Pub. L. 111-5, set out as an Effective and Termination Dates of 2009 Amendment note under section 24 of this title.

EFFECTIVE DATE OF 2008 AMENDMENT

Amendment by section 106(e)(2)(C) of Pub. L. 110-343 applicable to taxable years beginning after Dec. 31, 2007, see section 106(f)(1) of Pub. L. 110-343, set out as an Effective and Termination Dates of 2008 Amendment note under section 23 of this title.

Amendment by section 205(d)(1)(C) of Pub. L. 110-343 applicable to taxable years beginning after Dec. 31, 2008, see section 205(e) of Pub. L. 110-343, set out as an Effective and Termination Dates of 2008 Amendment note under section 24 of this title.

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109-280, title VIII, §833(d), Aug. 17, 2006, 120 Stat. 1004, provided that: “The amendments made by this section [amending this section and sections 219 and 408A of this title] shall apply to taxable years beginning after 2006.”

EFFECTIVE AND TERMINATION DATES OF 2005 AMENDMENT

Amendment by section 402(i)(3)(D) of Pub. L. 109-135 subject to title IX of the Economic Growth and Tax Relief Reconciliation Act of 2001, Pub. L. 107-16, §901, in the same manner as the provisions of such Act to which such amendment relates, see section 402(i)(3)(H) of Pub. L. 109-135, set out as a note under section 23 of this title.

Amendment by Pub. L. 109-135 effective as if included in the provisions of the Energy Policy Act of 2005, Pub. L. 109-58, to which it relates and applicable to taxable years beginning after Dec. 31, 2005, see section 402(m) of Pub. L. 109-135, set out as a note under section 23 of this title.

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108-311 applicable to taxable years beginning after Dec. 31, 2004, see section 208 of Pub. L. 108-311, set out as a note under section 2 of this title.

EFFECTIVE DATE OF 2002 AMENDMENT

Pub. L. 107-147, title IV, §411(x), Mar. 9, 2002, 116 Stat. 53, provided that: “Except as provided in subsection (c) [amending sections 23 and 137 of this title and enacting provisions set out as a note under section 23 of this title], the amendments made by this section [amending this section, sections 23, 24, 38, 45E, 45F, 63, 137, 401 to 404, 408, 409, 412, 414 to 417, 457, 530, 2016, 2101, 2511, 4980F, and 6428 of this title, sections 1003, 1054, 1055, 1082, and 1104 of Title 29, Labor, and provisions set out as notes under sections 38, 415, and 4980F of this title] shall take effect as if included in the provisions of the Economic Growth and Tax Relief Reconciliation Act of 2001 [Pub. L. 107-16] to which they relate.”

EFFECTIVE DATE

Amendment by section 618(b)(1) of Pub. L. 107-16 inapplicable to taxable years beginning during 2004 or 2005, see section 312(b)(2) of Pub. L. 108-311, set out as an Effective and Termination Dates of 2001 Amendment note under section 23 of this title.

Amendment by section 618(b)(1) of Pub. L. 107-16 inapplicable to taxable years beginning during 2002 and 2003,

see section 601(b)(2) of Pub. L. 107-147, set out as an Effective and Termination Dates of 2001 Amendment note under section 23 of this title.

Amendment by section 618(b)(1) of Pub. L. 107-16 applicable to taxable years beginning after Dec. 31, 2001, see section 618(d) of Pub. L. 107-16, set out as an Effective and Termination Dates of 2001 Amendment note under section 24 of this title.

§ 25C. Nonbusiness energy property

(a) Allowance of credit

In the case of an individual, there shall be allowed as a credit against the tax imposed by this chapter for the taxable year an amount equal to 30 percent of the sum of—

(1) the amount paid or incurred by the taxpayer during such taxable year for qualified energy efficiency improvements, and

(2) the amount of the residential energy property expenditures paid or incurred by the taxpayer during such taxable year.

(b) Limitation

The aggregate amount of the credits allowed under this section for taxable years beginning in 2009 and 2010 with respect to any taxpayer shall not exceed \$1,500.

(c) Qualified energy efficiency improvements

For purposes of this section—

(1) In general

The term “qualified energy efficiency improvements” means any energy efficient building envelope component which meets the prescriptive criteria for such component established by the 2000 International Energy Conservation Code, as such Code (including supplements) is in effect on the date of the enactment of this section (or, in the case of a metal roof with appropriate pigmented coatings, or an asphalt roof with appropriate cooling granules, which meet the Energy Star program requirements), if—

(A) such component is installed in or on a dwelling unit located in the United States and owned and used by the taxpayer as the taxpayer’s principal residence (within the meaning of section 121),

(B) the original use of such component commences with the taxpayer, and

(C) such component reasonably can be expected to remain in use for at least 5 years.

(2) Building envelope component

The term “building envelope component” means—

(A) any insulation material or system which is specifically and primarily designed to reduce the heat loss or gain of a dwelling unit when installed in or on such dwelling unit and meets the prescriptive criteria for such material or system established by the 2009 International Energy Conservation Code, as such Code (including supplements) is in effect on the date of the enactment of the American Recovery and Reinvestment Tax Act of 2009,

(B) exterior windows (including skylights),

(C) exterior doors, and

(D) any metal roof or asphalt roof installed on a dwelling unit, but only if such roof has appropriate pigmented coatings or

cooling granules which are specifically and primarily designed to reduce the heat gain of such dwelling unit.

(3) Manufactured homes included

The term “dwelling unit” includes a manufactured home which conforms to Federal Manufactured Home Construction and Safety Standards (part 3280 of title 24, Code of Federal Regulations).

(4) Qualifications for exterior windows, doors, and skylights

Such term shall not include any component described in subparagraph (B) or (C) of paragraph (2) unless such component is equal to or below a U factor of 0.30 and SHGC of 0.30.

(d) Residential energy property expenditures

For purposes of this section—

(1) In general

The term “residential energy property expenditures” means expenditures made by the taxpayer for qualified energy property which is—

(A) installed on or in connection with a dwelling unit located in the United States and owned and used by the taxpayer as the taxpayer’s principal residence (within the meaning of section 121), and

(B) originally placed in service by the taxpayer.

Such term includes expenditures for labor costs properly allocable to the onsite preparation, assembly, or original installation of the property.

(2) Qualified energy property

(A) In general

The term “qualified energy property” means—

- (i) energy-efficient building property,
- (ii) any qualified natural gas furnace, qualified propane furnace, qualified oil furnace, qualified natural gas hot water boiler, qualified propane hot water boiler, or qualified oil hot water boiler, or
- (iii) an advanced main air circulating fan.

(B) Performance and quality standards

Property described under subparagraph (A) shall meet the performance and quality standards, and the certification requirements (if any), which—

- (i) have been prescribed by the Secretary by regulations (after consultation with the Secretary of Energy or the Administrator of the Environmental Protection Agency, as appropriate), and
- (ii) are in effect at the time of the acquisition of the property, or at the time of the completion of the construction, reconstruction, or erection of the property, as the case may be.

(C) Requirements and standards for air conditioners and heat pumps

The standards and requirements prescribed by the Secretary under subparagraph (B) with respect to the energy efficiency ratio (EER) for central air conditioners and electric heat pumps—

(i) shall require measurements to be based on published data which is tested by manufacturers at 95 degrees Fahrenheit, and

(ii) may be based on the certified data of the Air Conditioning and Refrigeration Institute that are prepared in partnership with the Consortium for Energy Efficiency.

(3) Energy-efficient building property

The term “energy-efficient building property” means—

(A) an electric heat pump water heater which yields an energy factor of at least 2.0 in the standard Department of Energy test procedure,

(B) an electric heat pump which achieves the highest efficiency tier established by the Consortium for Energy Efficiency, as in effect on January 1, 2009.¹

(C) a central air conditioner which achieves the highest efficiency tier established by the Consortium for Energy Efficiency, as in effect on January 1, 2009,

(D) a natural gas, propane, or oil water heater which has either an energy factor of at least 0.82 or a thermal efficiency of at least 90 percent.²

(E) a stove which uses the burning of biomass fuel to heat a dwelling unit located in the United States and used as a residence by the taxpayer, or to heat water for use in such a dwelling unit, and which has a thermal efficiency rating of at least 75 percent, as measured using a lower heating value.

(4) Qualified natural gas, propane, and oil furnaces and hot water boilers

(A) Qualified natural gas furnace

The term “qualified natural gas furnace” means any natural gas furnace which achieves an annual fuel utilization efficiency rate of not less than 95.

(B) Qualified natural gas hot water boiler

The term “qualified natural gas hot water boiler” means any natural gas hot water boiler which achieves an annual fuel utilization efficiency rate of not less than 90.

(C) Qualified propane furnace

The term “qualified propane furnace” means any propane furnace which achieves an annual fuel utilization efficiency rate of not less than 95.

(D) Qualified propane hot water boiler

The term “qualified propane hot water boiler” means any propane hot water boiler which achieves an annual fuel utilization efficiency rate of not less than 90.

(E) Qualified oil furnaces

The term “qualified oil furnace” means any oil furnace which achieves an annual fuel utilization efficiency rate of not less than 90.

(F) Qualified oil hot water boiler

The term “qualified oil hot water boiler” means any oil hot water boiler which

¹ So in original. The period probably should be a comma.

² So in original. The period probably should be “, and”.

achieves an annual fuel utilization efficiency rate of not less than 90.

(5) Advanced main air circulating fan

The term “advanced main air circulating fan” means a fan used in a natural gas, propane, or oil furnace and which has an annual electricity use of no more than 2 percent of the total annual energy use of the furnace (as determined in the standard Department of Energy test procedures).

(6) Biomass fuel

The term “biomass fuel” means any plant-derived fuel available on a renewable or recurring basis, including agricultural crops and trees, wood and wood waste and residues (including wood pellets), plants (including aquatic plants), grasses, residues, and fibers.

(e) Special rules

For purposes of this section—

(1) Application of rules

Rules similar to the rules under paragraphs (4), (5), (6), (7), and (8) of section 25D(e) shall apply.

(2) Joint ownership of energy items

(A) In general

Any expenditure otherwise qualifying as an expenditure under this section shall not be treated as failing to so qualify merely because such expenditure was made with respect to two or more dwelling units.

(B) Limits applied separately

In the case of any expenditure described in subparagraph (A), the amount of the credit allowable under subsection (a) shall (subject to paragraph (1)) be computed separately with respect to the amount of the expenditure made for each dwelling unit.

(f) Basis adjustments

For purposes of this subtitle, if a credit is allowed under this section for any expenditure with respect to any property, the increase in the basis of such property which would (but for this subsection) result from such expenditure shall be reduced by the amount of the credit so allowed.

(g) Termination

This section shall not apply with respect to any property placed in service—

(1) after December 31, 2007, and before January 1, 2009, or

(2) after December 31, 2010.³

(Added Pub. L. 109–58, title XIII, §1333(a), Aug. 8, 2005, 119 Stat. 1026; amended Pub. L. 109–135, title IV, §412(b), Dec. 21, 2005, 119 Stat. 2636; Pub. L. 110–172, §11(a)(2), Dec. 29, 2007, 121 Stat. 2484; Pub. L. 110–343, div. B, title III, §302(a)–(e), Oct. 3, 2008, 122 Stat. 3844, 3845; Pub. L. 111–5, div. B, title I, §§1103(b)(2)(A), 1121(a)–(e), Feb. 17, 2009, 123 Stat. 320, 322–324.)

REFERENCES IN TEXT

The date of the enactment of this section, referred to in subsec. (c)(1), is the date of enactment of Pub. L. 109–58, which was approved Aug. 8, 2005.

³ So in original.

The date of the enactment of the American Recovery and Reinvestment Tax Act of 2009, referred to in subsec. (c)(2)(A), is the date of the enactment of div. B of Pub. L. 111–5, which was approved Feb. 17, 2009.

AMENDMENTS

2009—Subsecs. (a), (b). Pub. L. 111–5, §1121(a), added subsecs. (a) and (b) and struck out former subsecs. (a) and (b) which related to credit equal to the sum of 10 percent of the amount paid for qualified energy efficiency improvements and the amount of energy property expenditures and provided limits on credits and expenditures.

Subsec. (c)(2)(A). Pub. L. 111–5, §1121(d)(2), inserted “and meets the prescriptive criteria for such material or system established by the 2009 International Energy Conservation Code, as such Code (including supplements) is in effect on the date of the enactment of the American Recovery and Reinvestment Tax Act of 2009” after “such dwelling unit”.

Subsec. (c)(4). Pub. L. 111–5, §1121(d)(1), added par. (4).

Subsec. (d)(2)(A)(ii). Pub. L. 111–5, §1121(c)(2), amended cl. (ii) generally. Prior to amendment, cl. (ii) read as follows: “a qualified natural gas, propane, or oil furnace or hot water boiler, or”.

Subsec. (d)(3)(B). Pub. L. 111–5, §1121(b)(1), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: “an electric heat pump which has a heating seasonal performance factor (HSPF) of at least 9, a seasonal energy efficiency ratio (SEER) of at least 15, and an energy efficiency ratio (EER) of at least 13.”.

Subsec. (d)(3)(C). Pub. L. 111–5, §1121(b)(2), substituted “2009” for “2006”.

Subsec. (d)(3)(D). Pub. L. 111–5, §1121(b)(3), amended subpar. (D) generally. Prior to amendment, subpar. (D) read as follows: “a natural gas, propane, or oil water heater which has an energy factor of at least 0.80 or a thermal efficiency of at least 90 percent, and”.

Subsec. (d)(3)(E). Pub. L. 111–5, §1121(b)(4), inserted “, as measured using a lower heating value” after “75 percent”.

Subsec. (d)(4). Pub. L. 111–5, §1121(c)(1), amended par. (4) generally. Prior to amendment, text read as follows: “The term ‘qualified natural gas, propane, or oil furnace or hot water boiler’ means a natural gas, propane, or oil furnace or hot water boiler which achieves an annual fuel utilization efficiency rate of not less than 95.”

Subsec. (e)(1). Pub. L. 111–5, §1103(b)(2)(A), substituted “and (8)” for “(8), and (9)”.

Subsec. (g)(2). Pub. L. 111–5, §1121(e), substituted “December 31, 2010” for “December 31, 2009”.

2008—Subsec. (c)(1). Pub. L. 110–343, §302(e)(1), in introductory provisions, inserted “, or an asphalt roof with appropriate cooling granules,” before “which meet the Energy Star program requirements”.

Subsec. (c)(2)(D). Pub. L. 110–343, §302(e)(2), inserted “or asphalt roof” after “metal roof” and “or cooling granules” after “pigmented coatings”.

Subsec. (d)(2)(C). Pub. L. 110–343, §302(d)(2), amended heading and text of subpar. (C) generally. Prior to amendment, subpar. (C) related to requirements for standards for central air conditioners, electric heat pumps, and geothermal heat pumps.

Subsec. (d)(3)(C), (D). Pub. L. 110–343, §302(d)(1), redesignated subpars. (D) and (E) as (C) and (D), respectively, and struck out former subpar. (C) which read as follows: “a geothermal heat pump which—

“(i) in the case of a closed loop product, has an energy efficiency ratio (EER) of at least 14.1 and a heating coefficient of performance (COP) of at least 3.3,

“(ii) in the case of an open loop product, has an energy efficiency ratio (EER) of at least 16.2 and a heating coefficient of performance (COP) of at least 3.6, and

“(iii) in the case of a direct expansion (DX) product, has an energy efficiency ratio (EER) of at least 15 and a heating coefficient of performance (COP) of at least 3.5.”.

Subsec. (d)(3)(E). Pub. L. 110–343, §302(d)(1), redesignated subpar. (F) as (E). Former subpar. (E) redesignated (D).

Pub. L. 110-343, §302(c), inserted “or a thermal efficiency of at least 90 percent” after “.80”.

Subsec. (d)(3)(F). Pub. L. 110-343, §302(d)(1), redesignated subpar. (F) as (E).

Pub. L. 110-343, §302(b)(1), added subpar. (F).

Subsec. (d)(6). Pub. L. 110-343, §302(b)(2), added par. (6).

Subsec. (g). Pub. L. 110-343, §302(a), substituted “placed in service—” for “placed in service after December 31, 2007” and added pars. (1) and (2).

2007—Subsec. (c)(3). Pub. L. 110-172 substituted “part 3280” for “section 3280”.

2005—Subsec. (b)(2). Pub. L. 109-135 substituted “subsection (c)(2)(B)” for “subsection (c)(3)(B)”.

EFFECTIVE DATE OF 2009 AMENDMENT

Pub. L. 111-5, div. B, title I, §1103(c), Feb. 17, 2009, 123 Stat. 321, provided that:

“(1) IN GENERAL.—Except as provided in paragraph (2), the amendment made by this section [amending this section and sections 25D and 48 to 48B of this title] shall apply to periods after December 31, 2008, under rules similar to the rules of section 48(m) of the Internal Revenue Code of 1986 (as in effect on the day before the date of the enactment of the Revenue Reconciliation Act of 1990 [Nov. 5, 1990]).

“(2) CONFORMING AMENDMENTS.—The amendments made by subparagraphs (A) and (B) of subsection (b)(2) [amending this section and section 25D of this title] shall apply to taxable years beginning after December 31, 2008.”

Pub. L. 111-5, div. B, title I, §1121(f), Feb. 17, 2009, 123 Stat. 324, provided that:

“(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 2008.

“(2) EFFICIENCY STANDARDS.—The amendments made by paragraphs (1), (2), and (3) of subsection (b) and subsections (c) and (d) shall apply to property placed in service after the date of the enactment of this Act [Feb. 17, 2009].”

EFFECTIVE DATE OF 2008 AMENDMENT

Pub. L. 110-343, div. B, title III, §302(f), Oct. 3, 2008, 122 Stat. 3845, provided that:

“(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made [by] this section [amending this section] shall apply to expenditures made after December 31, 2008.

“(2) MODIFICATION OF QUALIFIED ENERGY EFFICIENCY IMPROVEMENTS.—The amendments made by subsection (e) [amending this section] shall apply to property placed in service after the date of the enactment of this Act [Oct. 3, 2008].”

EFFECTIVE DATE

Pub. L. 109-58, title XIII, §1333(c), Aug. 8, 2005, 119 Stat. 1030, provided that: “The amendments made by this section [enacting this section and amending section 1016 of this title] shall apply to property placed in service after December 31, 2005.”

§ 25D. Residential energy efficient property

(a) Allowance of credit

In the case of an individual, there shall be allowed as a credit against the tax imposed by this chapter for the taxable year an amount equal to the sum of—

(1) 30 percent of the qualified solar electric property expenditures made by the taxpayer during such year,

(2) 30 percent of the qualified solar water heating property expenditures made by the taxpayer during such year,

(3) 30 percent of the qualified fuel cell property expenditures made by the taxpayer during such year,

(4) 30 percent of the qualified small wind energy property expenditures made by the taxpayer during such year, and

(5) 30 percent of the qualified geothermal heat pump property expenditures made by the taxpayer during such year.

(b) Limitations

(1) Maximum credit for fuel cells

In the case of any qualified fuel cell property expenditure, the credit allowed under subsection (a) (determined without regard to subsection (c)) for any taxable year shall not exceed \$500 with respect to each half kilowatt of capacity of the qualified fuel cell property (as defined in section 48(c)(1)) to which such expenditure relates.

(2) Certification of solar water heating property

No credit shall be allowed under this section for an item of property described in subsection (d)(1) unless such property is certified for performance by the non-profit Solar Rating Certification Corporation or a comparable entity endorsed by the government of the State in which such property is installed.

(c) Limitation based on amount of tax; carry-forward of unused credit

(1) Limitation based on amount of tax

In the case of a taxable year to which section 26(a)(2) does not apply, the credit allowed under subsection (a) for the taxable year shall not exceed the excess of—

(A) the sum of the regular tax liability (as defined in section 26(b)) plus the tax imposed by section 55, over

(B) the sum of the credits allowable under this subpart (other than this section) and section 27 for the taxable year.

(2) Carryforward of unused credit

(A) Rule for years in which all personal credits allowed against regular and alternative minimum tax

In the case of a taxable year to which section 26(a)(2) applies, if the credit allowable under subsection (a) exceeds the limitation imposed by section 26(a)(2) for such taxable year reduced by the sum of the credits allowable under this subpart (other than this section), such excess shall be carried to the succeeding taxable year and added to the credit allowable under subsection (a) for such succeeding taxable year.

(B) Rule for other years

In the case of a taxable year to which section 26(a)(2) does not apply, if the credit allowable under subsection (a) exceeds the limitation imposed by paragraph (1) for such taxable year, such excess shall be carried to the succeeding taxable year and added to the credit allowable under subsection (a) for such succeeding taxable year.

(d) Definitions

For purposes of this section—

(1) Qualified solar water heating property expenditure

The term “qualified solar water heating property expenditure” means an expenditure

for property to heat water for use in a dwelling unit located in the United States and used as a residence by the taxpayer if at least half of the energy used by such property for such purpose is derived from the sun.

(2) Qualified solar electric property expenditure

The term “qualified solar electric property expenditure” means an expenditure for property which uses solar energy to generate electricity for use in a dwelling unit located in the United States and used as a residence by the taxpayer.

(3) Qualified fuel cell property expenditure

The term “qualified fuel cell property expenditure” means an expenditure for qualified fuel cell property (as defined in section 48(c)(1)) installed on or in connection with a dwelling unit located in the United States and used as a principal residence (within the meaning of section 121) by the taxpayer.

(4) Qualified small wind energy property expenditure

The term “qualified small wind energy property expenditure” means an expenditure for property which uses a wind turbine to generate electricity for use in connection with a dwelling unit located in the United States and used as a residence by the taxpayer.

(5) Qualified geothermal heat pump property expenditure

(A) In general

The term “qualified geothermal heat pump property expenditure” means an expenditure for qualified geothermal heat pump property installed on or in connection with a dwelling unit located in the United States and used as a residence by the taxpayer.

(B) Qualified geothermal heat pump property

The term “qualified geothermal heat pump property” means any equipment which—

(i) uses the ground or ground water as a thermal energy source to heat the dwelling unit referred to in subparagraph (A) or as a thermal energy sink to cool such dwelling unit, and

(ii) meets the requirements of the Energy Star program which are in effect at the time that the expenditure for such equipment is made.

(e) Special rules

For purposes of this section—

(1) Labor costs

Expenditures for labor costs properly allocable to the onsite preparation, assembly, or original installation of the property described in subsection (d) and for piping or wiring to interconnect such property to the dwelling unit shall be taken into account for purposes of this section.

(2) Solar panels

No expenditure relating to a solar panel or other property installed as a roof (or portion thereof) shall fail to be treated as property described in paragraph (1) or (2) of subsection (d)

solely because it constitutes a structural component of the structure on which it is installed.

(3) Swimming pools, etc., used as storage medium

Expenditures which are properly allocable to a swimming pool, hot tub, or any other energy storage medium which has a function other than the function of such storage shall not be taken into account for purposes of this section.

(4) Fuel cell expenditure limitations in case of joint occupancy

In the case of any dwelling unit with respect to which qualified fuel cell property expenditures are made and which is jointly occupied and used during any calendar year as a residence by two or more individuals, the following rules shall apply:

(A) Maximum expenditures for fuel cells

The maximum amount of such expenditures which may be taken into account under subsection (a) by all such individuals with respect to such dwelling unit during such calendar year shall be \$1,667 in the case of each half kilowatt of capacity of qualified fuel cell property (as defined in section 48(c)(1)) with respect to which such expenditures relate.

(B) Allocation of expenditures

The expenditures allocated to any individual for the taxable year in which such calendar year ends shall be an amount equal to the lesser of—

(i) the amount of expenditures made by such individual with respect to such dwelling during such calendar year, or

(ii) the maximum amount of such expenditures set forth in subparagraph (A) multiplied by a fraction—

(I) the numerator of which is the amount of such expenditures with respect to such dwelling made by such individual during such calendar year, and

(II) the denominator of which is the total expenditures made by all such individuals with respect to such dwelling during such calendar year.

(5) Tenant-stockholder in cooperative housing corporation

In the case of an individual who is a tenant-stockholder (as defined in section 216) in a cooperative housing corporation (as defined in such section), such individual shall be treated as having made his tenant-stockholder's proportionate share (as defined in section 216(b)(3)) of any expenditures of such corporation.

(6) Condominiums

(A) In general

In the case of an individual who is a member of a condominium management association with respect to a condominium which the individual owns, such individual shall be treated as having made the individual's proportionate share of any expenditures of such association.

(B) Condominium management association

For purposes of this paragraph, the term “condominium management association” means an organization which meets the requirements of paragraph (1) of section 528(c) (other than subparagraph (E) thereof) with respect to a condominium project substantially all of the units of which are used as residences.

(7) Allocation in certain cases

If less than 80 percent of the use of an item is for nonbusiness purposes, only that portion of the expenditures for such item which is properly allocable to use for nonbusiness purposes shall be taken into account.

(8) When expenditure made; amount of expenditure**(A) In general**

Except as provided in subparagraph (B), an expenditure with respect to an item shall be treated as made when the original installation of the item is completed.

(B) Expenditures part of building construction

In the case of an expenditure in connection with the construction or reconstruction of a structure, such expenditure shall be treated as made when the original use of the constructed or reconstructed structure by the taxpayer begins.

(f) Basis adjustments

For purposes of this subtitle, if a credit is allowed under this section for any expenditure with respect to any property, the increase in the basis of such property which would (but for this subsection) result from such expenditure shall be reduced by the amount of the credit so allowed.

(g) Termination

The credit allowed under this section shall not apply to property placed in service after December 31, 2016.

(Added Pub. L. 109-58, title XIII, §1335(a), Aug. 8, 2005, 119 Stat. 1033; amended Pub. L. 109-135, title IV, §402(i)(1), (2), (3)(E), Dec. 21, 2005, 119 Stat. 2612, 2614; Pub. L. 109-432, div. A, title II, §206, Dec. 20, 2006, 120 Stat. 2945; Pub. L. 110-343, div. B, title I, §106(a)-(c)(3)(A), (c)(4)-(e)(1), Oct. 3, 2008, 122 Stat. 3814-3816; Pub. L. 111-5, div. B, title I, §§1103(b)(2)(B), 1122(a), Feb. 17, 2009, 123 Stat. 320, 324.)

AMENDMENT OF SECTION

For termination of amendment by section 402(i)(3)(H) of Pub. L. 109-135, see Effective and Termination Dates of 2005 Amendment note below.

AMENDMENTS

2009—Subsec. (b)(1). Pub. L. 111-5, §1122(a)(1), amended par. (1) generally. Prior to amendment, par. (1) related to maximum credit with respect to qualified solar water heating property expenditures, qualified fuel cell property, qualified small wind energy property expenditures, and qualified geothermal heat pump property expenditures.

Subsec. (e)(4). Pub. L. 111-5, §1122(a)(2)(A), added par. heading and introductory provisions and struck out

former heading and introductory provisions. Former introductory provisions read as follows: “In the case of any dwelling unit which is jointly occupied and used during any calendar year as a residence by two or more individuals the following rules shall apply:”

Subsec. (e)(4)(A). Pub. L. 111-5, §1122(a)(2)(A), added subpar. (A) and struck out former subpar. (A) which related to maximum amount of expenditures allowed for credit in jointly occupied dwelling units with respect to qualified solar water heating property expenditures, qualified fuel cell property, qualified small wind energy property expenditures, and qualified geothermal heat pump property expenditures.

Subsec. (e)(4)(C). Pub. L. 111-5, §1122(a)(2)(B), struck out subpar. (C) which read as follows: “Subparagraphs (A) and (B) shall be applied separately with respect to expenditures described in paragraphs (1), (2), and (3) of subsection (d).”

Subsec. (e)(9). Pub. L. 111-5, §1103(b)(2)(B), struck out par. (9). Text read as follows: “For purposes of determining the amount of expenditures made by any individual with respect to any dwelling unit, there shall not be taken into account expenditures which are made from subsidized energy financing (as defined in section 48(a)(4)(C)).”

2008—Subsec. (a)(4). Pub. L. 110-343, §106(c)(1), added par. (4).

Subsec. (a)(5). Pub. L. 110-343, §106(d)(1), added par. (5).

Subsec. (b)(1). Pub. L. 110-343, §106(b)(1), amended par. (1) as amended by Pub. L. 110-343, §106(c)(2) and (d)(2), by redesignating subpars. (B) to (E) as (A) to (D), respectively, and striking out former subpar. (A) which read as follows: “\$2,000 with respect to any qualified solar electric property expenditures.”

Subsec. (b)(1)(D). Pub. L. 110-343, §106(c)(2), added subpar. (D).

Subsec. (b)(1)(E). Pub. L. 110-343, §106(d)(2), added subpar. (E).

Subsec. (c). Pub. L. 110-343, §106(e)(1), amended heading and text of subsec. (c) generally. Prior to amendment, subsec. (c) related to carryforward of unused credit.

Subsec. (d)(4). Pub. L. 110-343, §106(c)(3)(A), added par. (4).

Subsec. (d)(5). Pub. L. 110-343, §106(d)(3), added par. (5).

Subsec. (e)(4)(A). Pub. L. 110-343, §106(b)(2), amended subpar. (A) as amended by Pub. L. 110-343, §106(c)(4) and (d)(4), by redesignating cls. (ii) to (v) as (i) to (iv), respectively, and striking out former cl. (i) which read as follows: “\$6,667 in the case of any qualified solar electric property expenditures.”

Subsec. (e)(4)(A)(iv). Pub. L. 110-343, §106(c)(4), added cl. (iv).

Subsec. (e)(4)(A)(v). Pub. L. 110-343, §106(d)(4), added cl. (v).

Subsec. (g). Pub. L. 110-343, §106(a), substituted “December 31, 2016” for “December 31, 2008”.

2006—Subsecs. (a)(1), (b)(1)(A). Pub. L. 109-432, §206(b)(1), substituted “solar electric property expenditures” for “photovoltaic property expenditures”.

Subsec. (d)(2). Pub. L. 109-432, §206(b)(2), substituted “solar electric property expenditure” for “photovoltaic property expenditure” in heading and text.

Subsec. (e)(4)(A)(i). Pub. L. 109-432, §206(b)(1), substituted “solar electric property expenditures” for “photovoltaic property expenditures”.

Subsec. (g). Pub. L. 109-432, §206(a), substituted “2008” for “2007”.

2005—Subsec. (b)(1). Pub. L. 109-135, §402(i)(1), inserted “(determined without regard to subsection (c))” after “subsection (a)” in introductory provisions.

Subsec. (c). Pub. L. 109-135, §402(i)(3)(E), (H), temporarily reenacted heading without change and amended text generally. Prior to amendment, text read as follows: “If the credit allowable under subsection (a) exceeds the limitation imposed by section 26(a) for such taxable year reduced by the sum of the credits allowable under this subpart (other than this section), such

excess shall be carried to the succeeding taxable year and added to the credit allowable under subsection (a) for such succeeding taxable year.” See Effective and Termination Dates of 2005 Amendment note below.

Subsec. (e)(4)(A), (B). Pub. L. 109-135, §402(i)(2), amended subpars. (A) and (B) generally. Prior to amendment, subpars. (A) and (B) read as follows:

“(A) The amount of the credit allowable, under subsection (a) by reason of expenditures (as the case may be) made during such calendar year by any of such individuals with respect to such dwelling unit shall be determined by treating all of such individuals as 1 taxpayer whose taxable year is such calendar year.

“(B) There shall be allowable, with respect to such expenditures to each of such individuals, a credit under subsection (a) for the taxable year in which such calendar year ends in an amount which bears the same ratio to the amount determined under subparagraph (A) as the amount of such expenditures made by such individual during such calendar year bears to the aggregate of such expenditures made by all of such individuals during such calendar year.”

EFFECTIVE DATE OF 2009 AMENDMENT

Amendment by section 1103(b)(2)(B) of Pub. L. 111-5 applicable to taxable years beginning after Dec. 31, 2008, see section 1103(c)(2) of Pub. L. 111-5, set out as a note under section 25C of this title.

Pub. L. 111-5, div. B, title I, §1122(b), Feb. 17, 2009, 123 Stat. 324, provided that: “The amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 2008.”

EFFECTIVE DATE OF 2008 AMENDMENT

Amendment by Pub. L. 110-343 applicable to taxable years beginning after Dec. 31, 2007, except that amendment by section 106(b) of Pub. L. 110-343 applicable to taxable years beginning after Dec. 31, 2008, see section 106(f)(1), (2) of Pub. L. 110-343, set out as an Effective and Termination Dates of 2008 Amendment note under section 23 of this title.

EFFECTIVE AND TERMINATION DATES OF 2005 AMENDMENT

Amendment by section 402(i)(3)(E) of Pub. L. 109-135 subject to title IX of the Economic Growth and Tax Relief Reconciliation Act of 2001, Pub. L. 107-16, §901, in the same manner as the provisions of such Act to which such amendment relates, see section 402(i)(3)(H) of Pub. L. 109-135, set out as a note under section 23 of this title.

Amendments by Pub. L. 109-135 effective as if included in the provisions of the Energy Policy Act of 2005, Pub. L. 109-58, to which they relate, except that amendment by section 402(i)(3)(E) of Pub. L. 109-135 is applicable to taxable years beginning after Dec. 31, 2005, see section 402(m) of Pub. L. 109-135, set out as a note under section 23 of this title.

EFFECTIVE DATE

Section applicable to property placed in service after Dec. 31, 2005, in taxable years ending after such date, see section 1335(c) of Pub. L. 109-58, set out as an Effective and Termination Dates of 2005 Amendments note under section 23 of this title.

§ 26. Limitation based on tax liability; definition of tax liability

(a) Limitation based on amount of tax

(1) In general

The aggregate amount of credits allowed by this subpart (other than sections 23, 24, 25A(i), 25B, 25D, 30, 30B, and 30D) for the taxable year shall not exceed the excess (if any) of—

(A) the taxpayer’s regular tax liability for the taxable year, over

(B) the tentative minimum tax for the taxable year (determined without regard to the alternative minimum tax foreign tax credit).

For purposes of subparagraph (B), the taxpayer’s tentative minimum tax for any taxable year beginning during 1999 shall be treated as being zero.

(2) Special rule for taxable years 2000 through 2009

For purposes of any taxable year beginning during 2000, 2001, 2002, 2003, 2004, 2005, 2006, 2007, 2008, or 2009, the aggregate amount of credits allowed by this subpart for the taxable year shall not exceed the sum of—

(A) the taxpayer’s regular tax liability for the taxable year reduced by the foreign tax credit allowable under section 27(a), and

(B) the tax imposed by section 55(a) for the taxable year.

(b) Regular tax liability

For purposes of this part—

(1) In general

The term “regular tax liability” means the tax imposed by this chapter for the taxable year.

(2) Exception for certain taxes

For purposes of paragraph (1), any tax imposed by any of the following provisions shall not be treated as tax imposed by this chapter:

(A) section 55 (relating to minimum tax),

(B) section 59A (relating to environmental tax),

(C) subsection (m)(5)(B), (q), (t), or (v) of section 72 (relating to additional taxes on certain distributions),

(D) section 143(m) (relating to recapture of proration of Federal subsidy from use of mortgage bonds and mortgage credit certificates),

(E) section 530(d)(4) (relating to additional tax on certain distributions from Coverdell education savings accounts),

(F) section 531 (relating to accumulated earnings tax),

(G) section 541 (relating to personal holding company tax),

(H) section 1351(d)(1) (relating to recoveries of foreign expropriation losses),

(I) section 1374 (relating to tax on certain built-in gains of S corporations),

(J) section 1375 (relating to tax imposed when passive investment income of corporation having subchapter C earnings and profits exceeds 25 percent of gross receipts),

(K) subparagraph (A) of section 7518(g)(6) (relating to nonqualified withdrawals from capital construction funds taxed at highest marginal rate),

(L) sections 871(a) and 881 (relating to certain income of nonresident aliens and foreign corporations),

(M) section 860E(e) (relating to taxes with respect to certain residual interests),

(N) section 884 (relating to branch profits tax),

(O) sections 453(I)(3) and 453A(c) (relating to interest on certain deferred tax liabilities),

(P) section 860K¹ (relating to treatment of transfers of high-yield interests to disqualified holders),

(Q) section 220(f)(4) (relating to additional tax on Archer MSA distributions not used for qualified medical expenses),

(R) section 138(c)(2) (relating to penalty for distributions from Medicare Advantage MSA not used for qualified medical expenses if minimum balance not maintained),

(S) sections 106(e)(3)(A)(ii), 223(b)(8)(B)(i)(II), and 408(d)(9)(D)(i)(II) (relating to certain failures to maintain high deductible health plan coverage),

(T) section 170(o)(3)(B) (relating to recapture of certain deductions for fractional gifts),

(U) section 223(f)(4) (relating to additional tax on health savings account distributions not used for qualified medical expenses),

(V) subsections (a)(1)(B)(i) and (b)(4)(A) of section 409A (relating to interest and additional tax with respect to certain deferred compensation),

(W) section 36(f) (relating to recapture of homebuyer credit), and

(X) section 457A(c)(1)(B) (relating to determinability of amounts of compensation).

(c) Tentative minimum tax

For purposes of this part, the term “tentative minimum tax” means the amount determined under section 55(b)(1).

(Added § 25, renumbered § 26, Pub. L. 98-369, div. A, title IV, § 472, title VI, § 612(a), July 18, 1984, 98 Stat. 827, 905; amended Pub. L. 99-499, title V, § 516(b)(1)(A), Oct. 17, 1986, 100 Stat. 1770; Pub. L. 99-514, title II, § 261(c), title VI, § 632(c)(1), title VII, § 701(c)(1), Oct. 22, 1986, 100 Stat. 2214, 2277, 2340; Pub. L. 100-647, title I, §§ 1006(t)(16)(C), 1007(g)(1), 1011A(c)(10), 1012(q)(8), title IV, § 4005(g)(4), title V, § 5012(b)(2), Nov. 10, 1988, 102 Stat. 3425, 3434, 3476, 3524, 3650, 3662; Pub. L. 101-239, title VII, §§ 7811(c)(1), (2), 7821(a)(4)(A), Dec. 19, 1989, 103 Stat. 2406, 2407, 2424; Pub. L. 104-188, title I, § 1621(b)(1), Aug. 20, 1996, 110 Stat. 1866; Pub. L. 105-34, title II, § 213(e)(1), title XVI, § 1602(a)(1), Aug. 5, 1997, 111 Stat. 817, 1093; Pub. L. 105-277, div. J, title II, § 2001(a), Oct. 21, 1998, 112 Stat. 2681-901; Pub. L. 106-170, title V, § 501(a), Dec. 17, 1999, 113 Stat. 1918; Pub. L. 106-554, § 1(a)(7) [title II, § 202(a)(1)], Dec. 21, 2000, 114 Stat. 2763, 2763A-628; Pub. L. 107-16, title II, §§ 201(b)(2)(D), 202(f)(2)(C), title VI, § 618(b)(2)(C), June 7, 2001, 115 Stat. 46, 49, 108; Pub. L. 107-22, § 1(b)(2)(A), July 26, 2001, 115 Stat. 197; Pub. L. 107-147, title IV, §§ 415(a), 417(23)(B), title VI, § 601(a), Mar. 9, 2002, 116 Stat. 54, 57, 59; Pub. L. 108-311, title III, § 312(a), title IV, §§ 401(a)(1), 408(a)(5)(A), Oct. 4, 2004, 118 Stat. 1181, 1183, 1191; Pub. L. 109-135, title IV, §§ 403(hh)(1), 412(c), Dec. 21, 2005, 119 Stat. 2631, 2636; Pub. L. 109-222, title III, § 302(a), May 17, 2006, 120 Stat. 353; Pub. L. 110-166, § 3(a), Dec. 26, 2007, 121 Stat. 2461; Pub. L. 110-172, § 11(a)(3), Dec. 29, 2007, 121 Stat. 2484; Pub. L. 110-289, div. C, title I, § 3011(b)(1), July 30, 2008, 122 Stat. 2891; Pub. L. 110-343, div. B, title I, § 106(e)(2)(D), title II, § 205(d)(1)(D), div. C, title I, § 101(a), title VIII, § 801(b), Oct. 3, 2008, 122 Stat.

3817, 3839, 3863, 3931; Pub. L. 111-5, div. B, title I, §§ 1004(b)(3), 1011(a), 1142(b)(1)(D), 1144(b)(1)(D), Feb. 17, 2009, 123 Stat. 314, 319, 330, 332.)

AMENDMENT OF SECTION

For termination of amendment by section 901 of Pub. L. 107-16, see Effective and Termination Dates of 2001 Amendments note below.

REFERENCES IN TEXT

Section 860K, referred to in subsec. (b)(2)(P), was repealed by Pub. L. 108-357, title VIII, § 835(a), Oct. 22, 2004, 118 Stat. 1593.

AMENDMENTS

2009—Subsec. (a)(1). Pub. L. 111-5, § 1144(b)(1)(D), inserted “30B,” after “30,” in introductory provisions.

Pub. L. 111-5, § 1142(b)(1)(D), inserted “30,” after “25D,” in introductory provisions.

Pub. L. 111-5, § 1004(b)(3), inserted “25A(i),” after “24,” in introductory provisions.

Subsec. (a)(2). Pub. L. 111-5, § 1011(a), substituted “2009” for “2008” in heading and “2008, or 2009” for “or 2008” in introductory provisions.

2008—Subsec. (a)(1). Pub. L. 110-343, § 205(d)(1)(D), substituted “25D, and 30D” for “and 25D” in introductory provisions.

Pub. L. 110-343, § 106(e)(2)(D), substituted “25B, and 25D” for “and 25B” in introductory provisions.

Subsec. (a)(2). Pub. L. 110-343, § 101(a), substituted “2008” for “2007” in heading and “2007, or 2008” for “or 2007” in introductory provisions.

Subsec. (b)(2)(W). Pub. L. 110-289 added subpar. (W).

Subsec. (b)(2)(X). Pub. L. 110-343, § 801(b), added subpar. (X).

2007—Subsec. (a)(2). Pub. L. 110-166 substituted “2007” for “2006” in heading and “2006, or 2007” for “or 2006” in introductory provisions.

Subsec. (b)(2)(S) to (V). Pub. L. 110-172 added subpars. (S) and (T) and redesignated former subpars. (S) and (T) as (U) and (V), respectively.

2006—Subsec. (a)(2). Pub. L. 109-222 substituted “2006” for “2005” in heading and “2005, or 2006” for “or 2005” in introductory provisions.

2005—Subsec. (b)(2)(E). Pub. L. 109-135, § 412(c), substituted “section 530(d)(4)” for “section 530(d)(3)”.

Subsec. (b)(2)(T). Pub. L. 109-135, § 403(hh)(1), added subpar. (T).

2004—Subsec. (a)(2). Pub. L. 108-311, § 312(a), substituted “rule for taxable years 2000 through 2005” for “rule for 2000, 2001, 2002, and 2003” in heading and “2003, 2004, or 2005” for “or 2003” in text.

Subsec. (b)(2)(R). Pub. L. 108-311, § 408(a)(5)(A), substituted “Medicare Advantage MSA” for “Medicare+Choice MSA”.

Subsec. (b)(2)(S). Pub. L. 108-311, § 401(a)(1), added subpar. (S).

2002—Subsec. (a)(1). Pub. L. 107-147, § 417(23)(B), amended directory language of Pub. L. 107-16, § 618(b)(2)(C). See 2001 Amendment note below.

Subsec. (a)(2). Pub. L. 107-147, § 601(a), substituted “rule for 2000, 2001, 2002, and 2003” for “rule for 2000 and 2001” in heading and “during 2000, 2001, 2002, or 2003,” for “during 2000 or 2001,” in introductory provisions.

Subsec. (b)(2)(P), (Q). Pub. L. 107-147, § 415(a), which directed striking “and” at end of subpar. (P) and substituting “, and” for the period at the end of subpar. (Q), was executed to subpars. (P) and (Q) as redesignated by Pub. L. 105-34, § 213(e)(1), to reflect the probable intent of Congress. See 1997 Amendment notes below.

Subsec. (b)(2)(R). Pub. L. 107-147, § 415(a), added subpar. (R).

2001—Subsec. (a)(1). Pub. L. 107-16, § 618(b)(2)(C), as amended by Pub. L. 107-147, § 417(23)(B), substituted “, 24, and 25B” for “and 24” in introductory provisions.

Pub. L. 107-16, §§ 202(f)(2)(C), 901, temporarily substituted “sections 23 and 24” for “section 24” in intro-

¹ See References in Text note below.

ductory provisions. See Effective and Termination Dates of 2001 Amendments note below.

Pub. L. 107-16, §§ 201(b)(2)(D), 901, temporarily inserted “(other than section 24)” after “this subpart” in introductory provisions. See Effective and Termination Dates of 2001 Amendments note below.

Subsec. (b)(2)(E). Pub. L. 107-22 substituted “Coverdell education savings” for “education individual retirement”.

2000—Subsec. (b)(2)(Q). Pub. L. 106-554 substituted “Archer MSA” for “medical savings account”.

1999—Subsec. (a). Pub. L. 106-170 reenacted subsec. heading without change and amended text generally. Prior to amendment, text read as follows: “The aggregate amount of credits allowed by this subpart for the taxable year shall not exceed the excess (if any) of—

“(1) the taxpayer’s regular tax liability for the taxable year, over

“(2) the tentative minimum tax for the taxable year (determined without regard to the alternative minimum tax foreign tax credit).

For purposes of paragraph (2), the taxpayer’s tentative minimum tax for any taxable year beginning during 1998 shall be treated as being zero.”

1998—Subsec. (a). Pub. L. 105-277 inserted concluding provisions.

1997—Subsec. (b)(2)(E) to (O). Pub. L. 105-34, § 213(e)(1), added subpar. (E) and redesignated former subpars. (E) to (N) as (F) to (O), respectively. Former subpar. (O) redesignated (P).

Subsec. (b)(2)(P). Pub. L. 105-34, § 213(e)(1), redesignated subpar. (P) as (Q).

Pub. L. 105-34, § 1602(a)(1), added subpar. (P).

Subsec. (b)(2)(Q). Pub. L. 105-34, § 213(e)(1), redesignated subpar. (P) as (Q).

1996—Subsec. (b)(2)(O). Pub. L. 104-188 added subpar. (O).

1989—Subsec. (b)(2)(C), (D). Pub. L. 101-239, § 7811(c)(1), amended subpars. (C) and (D) generally. Prior to amendment, subpars. (C) and (D) read as follows:

“(C) subsection (m)(5)(B) (q), or (v) of section 72 (relating to additional tax on certain distributions),

“(D) section 72(t) (relating to 10-percent additional tax on early distributions from qualified retirement plans).”

Subsec. (b)(2)(K). Pub. L. 101-239, § 7811(c)(2), added subpar. (K) and struck out former subpar. (K) which was identical.

Subsec. (b)(2)(L), (M). Pub. L. 101-239, § 7811(c)(2), added subpars. (L) and (M) and struck out former subpars. (L) and (M) which read as follows:

“(L) section 860E(e) (relating to taxes with respect to certain residual interests), and

“(L) section 884 (relating to branch profits tax), and
“(M) section 143(m) (relating to recapture of portion of federal subsidy from use of mortgage bonds and mortgage credit certificates).”

Subsec. (b)(2)(N). Pub. L. 101-239, § 7821(a)(4)(A), which directed amendment of subsec. (b)(2) of this section “as amended by section 11811” by adding subpar. (N), was executed as if it directed amendment of subsec. (b)(2) of this section “as amended by section 7811”, to reflect the probable intent of Congress and the renumbering of section 11811 of H.R. 3299 as section 7811 prior to the enactment of H.R. 3299 into law as Pub. L. 101-239.

1988—Subsec. (b)(2)(C). Pub. L. 100-647, § 1011A(c)(10)(A), struck out “, (o)(2),” after “subsection (m)(5)(B)”.

Pub. L. 100-647, § 5012(b)(2), substituted “(q), or (v)” for “or (q)”.

Subsec. (b)(2)(D). Pub. L. 100-647, § 1011A(c)(10)(B), substituted “72(t) (relating to 10-percent additional tax on early distributions from qualified retirement plans)” for “408(f) (relating to additional tax on income from certain retirement accounts)”.

Subsec. (b)(2)(K). Pub. L. 100-647, § 1007(g)(1), substituted “corporations.” for “corporations.”.

Subsec. (b)(2)(L). Pub. L. 100-647, § 1012(q)(8), added subpar. (L) relating to branch profits tax.

Pub. L. 100-647, § 1006(t)(16)(C), added subpar. (L) relating to taxes with respect to certain residual interests.

Subsec. (b)(2)(M). Pub. L. 100-647, § 4005(g)(4), added subpar. (M).

1986—Subsec. (a). Pub. L. 99-514, § 701(c)(1)(A), amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows: “The aggregate amount of credits allowed by this subpart for the taxable year shall not exceed the taxpayer’s tax liability for such taxable year.”

Subsec. (b). Pub. L. 99-514, § 701(c)(1)(B)(i), (v), substituted “Regular tax liability” for “Tax liability” in heading and “this part” for “this section” in introductory provisions.

Subsec. (b)(1). Pub. L. 99-514, § 701(c)(1)(B)(ii), substituted “regular tax liability” for “tax liability”.

Subsec. (b)(2). Pub. L. 99-499 added subpar. (B) and redesignated former subpars. (B) to (J) as (C) to (K), respectively.

Pub. L. 99-514, § 701(c)(1)(B)(iii), substituted “section 55 (relating to minimum tax)” for “section 56 (relating to corporate minimum tax)” in subpar. (A).

Pub. L. 99-514, § 632(c)(1), substituted “certain built-in gains” for “certain capital gains” in subpar. (G).

Pub. L. 99-514, § 261(c), added subpar. (I).

Pub. L. 99-514, § 701(c)(1)(B)(iv), added subpar. (J).

Subsec. (c). Pub. L. 99-514, § 701(c)(1)(C), amended subsec. (c) generally, substituting provisions relating to tentative minimum tax for provisions referring to section 55(c) of this title for similar rule for alternative minimum tax for taxpayers other than corporations.

EFFECTIVE DATE OF 2009 AMENDMENT

Amendment by section 1004(b)(3) of Pub. L. 111-5 applicable to taxable years beginning after Dec. 31, 2008, see section 1004(d) of Pub. L. 111-5, set out as an Effective and Termination Dates of 2009 Amendment note under section 24 of this title.

Pub. L. 111-5, div. B, title I, § 1011(b), Feb. 17, 2009, 123 Stat. 319, provided that: “The amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 2008.”

Amendment by section 1142(b)(1)(D) of Pub. L. 111-5 applicable to vehicles acquired after Feb. 17, 2009, see section 1142(c) of Pub. L. 111-5, set out as an Effective and Termination Dates of 2009 Amendment note under section 24 of this title.

Amendment by section 1144(b)(1)(D) of Pub. L. 111-5 applicable to taxable years beginning after Dec. 31, 2008, see section 1144(c) of Pub. L. 111-5, set out as an Effective and Termination Dates of 2009 Amendment note under section 24 of this title.

EFFECTIVE DATE OF 2008 AMENDMENT

Amendment by section 106(e)(2)(D) of Pub. L. 110-343 applicable to taxable years beginning after Dec. 31, 2007, see section 106(f)(1) of div. B of Pub. L. 110-343, set out as an Effective and Termination Dates of 2008 Amendment note under section 23 of this title.

Amendment by section 205(d)(1)(D) of Pub. L. 110-343 applicable to taxable years beginning after Dec. 31, 2008, see section 205(e) of div. B of Pub. L. 110-343, set out as an Effective and Termination Dates of 2008 Amendment note under section 24 of this title.

Pub. L. 110-343, div. C, title I, § 101(b), Oct. 3, 2008, 122 Stat. 3863, provided that: “The amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 2007.”

Amendment by section 801(b) of Pub. L. 110-343 applicable to amounts deferred which are attributable to services performed after Dec. 31, 2008, with certain exceptions, see section 801(d) of div. C of Pub. L. 110-343, set out as an Effective Date note under section 457A of this title.

Pub. L. 110-289, div. C, title I, § 3011(c), July 30, 2008, 122 Stat. 2891, provided that: “The amendments made by this section [enacting section 36 of this title, amending this section and section 6211 of this title and section 1324 of Title 31, Money and Finance, and renumbering former section 36 of this title as section 37 of this title] shall apply to residences purchased on or after

April 9, 2008, in taxable years ending on or after such date.”

EFFECTIVE DATE OF 2007 AMENDMENT

Pub. L. 110-166, §3(b), Dec. 26, 2007, 121 Stat. 2461, provided that: “The amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 2006.”

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109-222, title III, §302(b), May 17, 2006, 120 Stat. 353, provided that: “The amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 2005.”

EFFECTIVE DATE OF 2005 AMENDMENT

Pub. L. 109-135, title IV, §403(nn), Dec. 21, 2005, 119 Stat. 2632, provided that: “The amendments made by this section [see Tables for classification] shall take effect as if included in the provisions of the American Jobs Creation Act of 2004 [Pub. L. 108-357] to which they relate.”

EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108-311, title III, §312(c), Oct. 4, 2004, 118 Stat. 1181, provided that: “The amendments made by this section [amending this section and section 904 of this title] shall apply to taxable years beginning after December 31, 2003.”

Pub. L. 108-311, title IV, §401(b), Oct. 4, 2004, 118 Stat. 1183, provided that: “The amendments made by subsection (a) [amending this section and section 35 of this title] shall take effect as if included in section 1201 of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 [Pub. L. 108-173].”

EFFECTIVE DATE OF 2002 AMENDMENT

Pub. L. 107-147, title IV, §415(b), Mar. 9, 2002, 116 Stat. 54, provided that: “The amendment made by this section [amending this section] shall take effect as if included in section 4006 of the Balanced Budget Act of 1997 [Pub. L. 105-33].”

Pub. L. 107-147, title VI, §601(c), Mar. 9, 2002, 116 Stat. 59, provided that: “The amendments made by this section [amending this section and section 904 of this title] shall apply to taxable years beginning after December 31, 2001.”

EFFECTIVE AND TERMINATION DATES OF 2001 AMENDMENTS

Amendment by Pub. L. 107-16 inapplicable to taxable years beginning during 2004 or 2005, see section 312(b)(2) of Pub. L. 108-311, set out as a note under section 23 of this title.

Amendment by Pub. L. 107-16 inapplicable to taxable years beginning during 2002 and 2003, see section 601(b)(2) of Pub. L. 107-147, set out as a note under section 23 of this title.

Pub. L. 107-22, §1(c), July 26, 2001, 115 Stat. 197, provided that: “The amendments made by this section [amending this section and sections 72, 135, 529, 530, 4973, 4975, and 6693 of this title] shall take effect on the date of the enactment of this Act [July 26, 2001].”

Amendment by section 201(b)(2)(D) of Pub. L. 107-16 applicable to taxable years beginning after Dec. 31, 2001, see section 201(e)(2) of Pub. L. 107-16, set out as a note under section 24 of this title.

Amendment by section 202(f)(2)(C) of Pub. L. 107-16 applicable to taxable years beginning after Dec. 31, 2001, see section 202(g)(1) of Pub. L. 107-16, set out as a note under section 23 of this title.

Amendment by section 618(b)(2)(C) of Pub. L. 107-16 applicable to taxable years beginning after Dec. 31, 2001, see section 618(d) of Pub. L. 107-16, set out as a note under section 24 of this title.

Amendment by sections 201(b)(2)(D) and 202(f)(2)(C) of Pub. L. 107-16 inapplicable to taxable, plan, or limitation years beginning after Dec. 31, 2010, and the Inter-

nal Revenue Code of 1986 to be applied and administered to such years as if such amendment had never been enacted, see section 901 of Pub. L. 107-16, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1999 AMENDMENT

Amendment by Pub. L. 106-170 applicable to taxable years beginning after Dec. 31, 1998, see section 501(c) of Pub. L. 106-170, set out as a note under section 24 of this title.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105-277 applicable to taxable years beginning after Dec. 31, 1997, see section 2001(c) of Pub. L. 105-277, set out as a note under section 24 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Section 213(f) of Pub. L. 105-34 provided that: “The amendments made by this section [enacting section 530 of this title and amending this section and sections 135, 4973, 4975, and 6693 of this title] shall apply to taxable years beginning after December 31, 1997.”

Section 1602(i) of Pub. L. 105-34 provided that: “The amendments made by this section [amending this section and sections 162, 220, 264, 877, 2107, 2501, 4975, 6050Q, 6652, 6693, 6724, and 7702B of this title, renumbering section 6039F of this title as section 6039G of this title, and amending provisions set out as a note under section 264 of this title] shall take effect as if included in the provisions of the Health Insurance Portability and Accountability Act of 1996 [Pub. L. 104-191] to which such amendments relate.”

EFFECTIVE DATE OF 1996 AMENDMENT

Section 1621(d) of Pub. L. 104-188 provided that: “The amendments made by this section [enacting sections 860H to 860L of this title and amending this section and sections 56, 382, 582, 856, 860G, 1202, and 7701 of this title] shall take effect on September 1, 1997.”

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by section 7811(c)(1), (2) of Pub. L. 101-239 effective, except as otherwise provided, as if included in the provision of the Technical and Miscellaneous Revenue Act of 1988, Pub. L. 100-647, to which such amendment relates, see section 7817 of Pub. L. 101-239, set out as a note under section 1 of this title.

Section 7823 of Pub. L. 101-239 provided that: “Except as otherwise provided in this part [part II (§§ 7821-7823) of subtitle H of title VII of Pub. L. 101-239, amending this section and sections 453A, 842, 1503, 6427, 6655, 6863, 7519, 7611, 9502, 9503, and 9508 of this title and enacting provisions set out as notes under sections 56 and 7519 of this title], any amendment made by this part shall take effect as if included in the provision of the 1987 Act [Pub. L. 100-203, title X] to which such amendment relates.”

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by section 1006(t)(16)(C) of Pub. L. 100-647 applicable, with certain exceptions, to transfers after Mar. 31, 1988, and to excess inclusions for periods after Mar. 31, 1988, see section 1006(t)(16)(D)(ii)-(iv) of Pub. L. 100-647, set out as a note under section 860E of this title.

Amendment by sections 1007(g)(1), 1011A(c)(10), and 1012(q)(8) of Pub. L. 100-647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99-514, to which such amendment relates, see section 1019(a) of Pub. L. 100-647, set out as a note under section 1 of this title.

Amendment by section 4005(g)(4) of Pub. L. 100-647 applicable, with certain exceptions, to financing provided, and mortgage credit certificates issued, after Dec. 31, 1990, see section 4005(h)(3) of Pub. L. 100-647, set out as a note under section 143 of this title.

Amendment by section 5012(b)(2) of Pub. L. 100-647 applicable to contracts entered into on or after June 21,

1988, with special rule where death benefit increases by more than \$150,000, certain other material changes taken into account, and certain exchanges permitted, see section 5012(e) of Pub. L. 100-647, set out as an Effective Date note under section 7702A of this title.

EFFECTIVE DATE OF 1986 AMENDMENTS

Amendment by section 261(c) of Pub. L. 99-514 applicable to taxable years beginning after Dec. 31, 1986, see section 261(g) of Pub. L. 99-514, set out as an Effective Date note under section 7518 of this title.

Amendment by section 632(c)(1) of Pub. L. 99-514 applicable to taxable years beginning after Dec. 31, 1986, but only in cases where the return for the taxable year is filed pursuant to an S election made after Dec. 31, 1986, see section 633(b) of Pub. L. 99-514, as amended, set out as an Effective Date note under section 336 of this title.

Amendment by section 632(c)(1) of Pub. L. 99-514 not applicable in the case of certain transactions, see section 54(d)(3)(D) of Pub. L. 98-369, as amended, set out as an Effective Date of 1984 Amendment note under section 311 of this title.

Amendment by section 701(c)(1) of Pub. L. 99-514 applicable to taxable years beginning after Dec. 31, 1986, with certain exceptions and qualifications, see section 701(f) of Pub. L. 99-514, set out as an Effective Date note under section 55 of this title.

Section 516(c) of Pub. L. 99-499 provided that: "The amendments made by this section [enacting section 59A of this title and amending this section and sections 164, 275, 936, 1561, 6154, 6425, and 6655 of this title] shall apply to taxable years beginning after December 31, 1986."

EFFECTIVE DATE

Section applicable to taxable years beginning after Dec. 31, 1983, and to carrybacks from such years, see section 475(a) of Pub. L. 98-369, set out as an Effective Date of 1984 Amendment note under section 21 of this title.

APPLICABILITY OF CERTAIN AMENDMENTS BY PUBLIC LAW 99-514 IN RELATION TO TREATY OBLIGATIONS OF UNITED STATES

For applicability of amendment by section 701(c)(1) of Pub. L. 99-514 notwithstanding any treaty obligation of the United States in effect on Oct. 22, 1986, with provision that for such purposes any amendment by title I of Pub. L. 100-647 be treated as if it had been included in the provision of Pub. L. 99-514 to which such amendment relates, see section 1012(aa)(2), (4) of Pub. L. 100-647, set out as a note under section 861 of this title.

TREATMENT OF TAX IMPOSED UNDER FORMER SECTION 409(c)

Section 491(f)(5) of Pub. L. 98-369, as amended by Pub. L. 99-514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that: "For purposes of section 26(b) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (as amended by this Act), any tax imposed by section 409(c) of such Code (as in effect before its repeal by this section) shall be treated as a tax imposed by section 408(f) of such Code."

SUBPART B—OTHER CREDITS

Sec. 27.	Taxes of foreign countries and possessions of the United States; possession tax credit.
[28, 29.	Renumbered.]
30.	Certain plug-in electric vehicles.
30A.	Puerto Rico economic activity credit.
30B.	Alternative motor vehicle credit.
30C.	Alternative fuel vehicle refueling property credit.
30D.	New qualified plug-in electric drive motor vehicles.

AMENDMENTS

2009—Pub. L. 111-5, div. B, title I, §1142(b)(8), Feb. 17, 2009, 123 Stat. 331, substituted "Certain plug-in electric

vehicles" for "Credit for qualified electric vehicles" in item 30.

2008—Pub. L. 110-343, div. B, title II, §205(d)(4), Oct. 3, 2008, 122 Stat. 3839, added item 30D.

2005—Pub. L. 109-135, title IV, §412(e), Dec. 21, 2005, 119 Stat. 2637, substituted "Alternative fuel vehicle refueling property credit" for "Clean-fuel vehicle refueling property credit" in item 30C.

Pub. L. 109-58, title XIII, §§1322(a)(3)(K), 1341(b)(5), 1342(b)(5), Aug. 8, 2005, 119 Stat. 1012, 1049, 1051, struck out item 29 "Credit for producing fuel from a non-conventional source" and added items 30B and 30C.

1997—Pub. L. 105-34, title XVI, §1601(f)(1)(B), Aug. 5, 1997, 111 Stat. 1090, substituted "Puerto Rico" for "Puerto Rican" in item 30A.

1996—Pub. L. 104-188, title I, §§1205(a)(3)(A), 1601(b)(2)(E), (F)(i), Aug. 20, 1996, 110 Stat. 1775, 1833, substituted "Other Credits" for "Foreign Tax Credits, Etc." in subpart heading, struck out item 28 "Clinical testing expenses for certain drugs for rare diseases or conditions", and added item 30A.

1992—Pub. L. 102-486, title XIX, §1913(b)(2)(A), Oct. 24, 1992, 106 Stat. 3020, added item 30.

1986—Pub. L. 99-514, title II, §231(d)(3)(J), Oct. 22, 1986, 100 Stat. 2180, struck out item 30 "Credit for increasing research activities".

1984—Pub. L. 98-369, div. A, title IV, §471(b), July 18, 1984, 98 Stat. 826, added subpart B heading and analysis of sections for subpart B consisting of items 27 (formerly 33), 28 (formerly 44H), 29 (formerly 44D), and 30 (formerly 44F). Former subpart B was redesignated E.

§ 27. Taxes of foreign countries and possessions of the United States; possession tax credit

(a) Foreign tax credit

The amount of taxes imposed by foreign countries and possessions of the United States shall be allowed as a credit against the tax imposed by this chapter to the extent provided in section 901.

(b) Section 936 credit

In the case of a domestic corporation, the amount provided by section 936 (relating to Puerto Rico and possession tax credit) shall be allowed as a credit against the tax imposed by this chapter.

(Aug. 16, 1954, ch. 736, 68A Stat. 13, §33; Pub. L. 94-455, title X, §1051(a), Oct. 4, 1976, 90 Stat. 1643; renumbered §27, Pub. L. 98-369, div. A, title IV, §471(c), July 18, 1984, 98 Stat. 826.)

AMENDMENTS

1984—Pub. L. 98-369, §471(c), renumbered section 33 of this title as this section.

1976—Pub. L. 94-455 designated existing provisions as subsec. (a) and added subsec. (b).

EFFECTIVE DATE OF 1976 AMENDMENT

Section 1051(i) of Pub. L. 94-455, as amended by Pub. L. 99-514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: "(1) Except as provided by paragraph (2), the amendments made by this section [enacting section 936 of this title and amending sections 33 [now 27], 48, 116, 243, 246, 861, 901, 904, 931, 1504, and 6091 of this title] shall apply to taxable years beginning after December 31, 1975, except that 'qualified possession source investment income' as defined in section 936(d)(2) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] shall include income from any source outside the United States if the taxpayer establishes to the satisfaction of the Secretary of the Treasury or his delegate that the income from such sources was earned before October 1, 1976.

"(2) The amendment made by subsection (d)(2) [amending section 901 of this title] shall not apply to any tax imposed by a possession of the United States